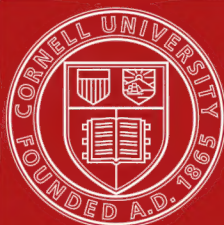


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MINUTES AND TESTIMONY

OF THE

Joint Legislative Committee

Appointed to Investigate the

Public Service Commissions

(Authorized by Joint Resolution of January 21, 1915, and continued
by Joint Resolution of April 24, 1915; further continued by
Joint Resolution January 20, 1916, and March 6, 1916)

VOLUME VI

TRANSMITTED TO THE LEGISLATURE MARCH 30, 1916

JOINT COMMITTEE OF THE LEGISLATURE

FROM THE SENATE

HON. GEORGE F. THOMPSON,
Chairman

HON. ROBERT R. LAWSON,
HON. JAMES E. TOWNER,
HON. CHARLES J. HEWITT,
HON. JAMES A. FOLEY.

FROM THE ASSEMBLY

HON. J. LESLIE KINCAID,
Vice-Chairman

HON. R. HUNTER MCQUISTION,
Secretary

HON. WILLIAM C. BAXTER,
HON. AARON A. FEINBERG,
HON. FREDERICK S. BURR,
HON. CHARLES D. DONOHUE.

COUNSEL TO THE COMMITTEE

HON. MERTON E. LEWIS,
Deputy Attorney-General

Committee organized at the Hotel Biltmore, New York
June 24, 1915.

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TESTIMONY

JUNE 17th, 1916

SATURDAY, 10.30 A. M.

Hearing continued, pursuant to adjournment.

Mr. Smith.— I wish to swear Mr. Grant L. Pugh.

GRANT L. PUGH, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Pugh, you live in the city of Lockport? A. Yes, sir.

Q. And are engaged in business? A. Yes, sir.

Q. What line of business? A. Cold storage.

Q. You are the manager? A. Yes, sir.

Q. Of what cold storage? A. Niagara County Fruit Company.

Q. How long have you been manager? A. About six years.

Q. You use electricity for power? A. Yes, sir.

Q. Furnished by the Lockport Light, Heat & Power Company?
A. Yes, sir.

Q. How long have they furnished you power? A. Since I
have been in charge of the building.

Q. Have you an engineer in charge of the electric operation?
A. Yes, sir.

Q. How long has your present engineer been in your employ?
A. Since I have been there.

Q. For five or six years? A. Yes, sir.

Q. He is more familiar with the matter of the cost of current
and has knowledge of it? A. Yes, sir; he has charge of that.

CHARLES A. FINLEY, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are the engineer mentioned by Mr. Pugh, are you,
Mr. Finley? A. Yes, sir.

Q. In charge of the building in which he is the manager?

A. Yes, sir.

Q. In the cold storage business in the city of Lockport? A. Yes, sir.

Q. And uses electricity for power purposes? A. Yes, sir.

Q. Furnished by the Lockport Light, Heat & Power Company? A. Yes, sir.

Q. And has been so furnished for more than two years last past? A. Yes, sir.

Q. You are acquainted with the electric apparatus in your institution? A. Yes, sir.

Q. And the matter of bills and costs of electric power comes directly to your attention? A. Yes, sir.

Q. And are within your personal charge? A. Yes, sir.

Q. Are you able to state the effect of the new rates as it affects your institution? A. Yes; our bills are increased.

Q. Have you the bills with you that will show that? A. Yes, sir.

Q. Will you produce them to the Committee? A. I have condensed them into that form (produces paper).

Q. You can make your statement in any way that you please to the Committee, showing the difference in the cost to you under the old rate and the new rate. Go ahead. A. You want the difference in the years 1915 and 1916?

Q. Yes, from the time of the establishment of the new rate. A. In the season of 1914, in November, under the old rate, we used 9,428 kilowatt hours at a gross cost of \$128.04; the service charge was \$15.75, making the total \$143.79; and with a discount of \$32.01, that leaves a net of \$111.78. In 1915 the bill for November showed that the kilowatt hours was 6,347, at a gross cost of \$63.47, and a service charge of \$51.25, making a total of \$114.72, from which there was a discount allowed of \$7.50, leaving the net bill \$107.22. That was \$4.56 cheaper under the new rate than under the old rate for the month of November; but the fact in this case was that we used 9,428 kilowatt hours in 1914 and only 6,347 in 1915. Our consumption was greater by nearly one-third, and our service charge was

higher, \$15.75 under the old rate and \$51.25 under the new rate.

Q. A saving of one-third of your power saved you a charge on your bill of \$4.56? A. Yes, sir, \$4.56.

Q. How about December? A. In December of 1914 our consumption was 2,759 kilowatt hours, at a gross cost of \$48.74, and a service charge of \$5.25, making the total \$53.99, from which was allowed a discount of \$12.18, leaving the net bill \$41.81. For the same month in 1915, our consumption was 3,044 kilowatt hours at a gross cost of \$30.44, and a service charge of \$54.25, making a total of \$84.69, from which was deducted a discount of \$13 leaving the net bill \$71.69. So that in that month we paid \$29.88 more under the new rate than under the old.

Q. For how much additional power and service? A. We used more current that month, a difference of about 285 kilowatt hours — it was 3,044 in 1915 and only 2,759 in 1914.

Q. About 300 kilowatts difference? A. Yes, sir.

Q. And that cost you nearly \$30? A. Yes, sir.

Q. And that's about \$10 a hundred extra? A. Yes.

Q. And your service charge that month was more than the month before? A. Yes; in December, 1915, it was \$54.25 and in December, 1914, it was \$5.25.

Q. Your demand charge increased between November and December? A. Yes, sir.

Q. Continue with your statement, please. A. In the month of January, under the old rate, our consumption was 3,953 kilowatt hours of which the gross cost was \$71.10, and a service charge of \$6.75 made a total cost of \$77.85; and that, with a discount of \$17.77 would leave a net cost of \$60.08; in January of this year, under the new rate, our consumption was 3,822 kilowatt hours, the gross cost was \$38.22 and the service charge was \$48.25, making the total of \$86.47, which, with a discount of \$7.00 leaves \$79.47 as the net cost.

Q. That is how much difference? A. The difference for the month of January was \$19.39.

Q. Practically no difference in the consumption? A. Oh, yes; more used under the old rate than under the new.

Q. Your demand charge — what had happened to that? A. The demand charge decreased from the previous month.

Q. About how much decrease? A. About \$6.00.

Q. Had you changed your installation in any way? A. No.

Q. Or your demand? A. Practically the same; they had a man come around who took the reading of the meter.

Q. What about the next month? A. The next is February. Under the old rate, a year ago, our consumption was 4,225 kilowatt hours, and the gross cost was \$73.28 and the service charge \$7.50, making a total of \$80.78; and that, with a discount of \$18.31, would leave the net cost of \$62.47; in 1916, in February, the consumption was 3,293 kilowatt hours and the gross cost \$32.93 and service charge \$33.25, making the total \$66.18; the discount was \$4.50, so the net cost was \$61.68.

Q. What is the difference in that? A. Under the old rate it was 59 cents cheaper than under the new rate.

Q. What explanation, if any, is there for that? A. No explanation.

Q. What amount of power was used? A. By the old bill 4,225 kilowatt hours and under the new bill 3,293 kilowatt hours.

Q. Smaller consumption under the new rate? A. Yes.

Q. By how many kilowatt hours is it smaller? A. About 900.

Q. Saving 79 cents by saving 900 kilowatt hours of consumption? A. Yes; our demand was less; we are trying to keep demand down by operating one side of the machine.

Q. The immediate effect is to reduce instead of increase the current. A. Yes.

Q. You have to be economical? A. Not in the use of the current but in the demand.

Q. In the demand? A. Yes; we have to keep the demand down in order to keep the bills down; we always operated both sides of the 30-ton machine which has a compressor, but now we operate only one side; we have to operate more hours during the day than before; we only ran four hours under the old rate and have to run eight hours under the new to keep the demand down.

Q. Well, read the next month for us. A. March. Our consumption under the old system, 1914, was 5,322, and gross cost \$87.44 and service charge \$9.00, making the total \$96.44, and a discount of \$21.85 brings the net cost down to \$74.59. Under the new rate our consumption for March was 3,964 kilowatt hours, and the gross cost was \$39.64 and service charge \$40.75, making the total \$80.39; the discount was \$5.75, and that made the net cost \$74.64; a difference in the month of March between the old rate and the new rate of five cents.

Q. With what relative proportion of consumption? A. Under the old it was 5,322 kilowatt hours and under the new it was 3,964 kilowatt hours.

Q. So that for about 1,200 kilowatt hours you paid 5 cents more? A. Yes, sir.

By Mr. Thompson:

Q. You operate a cold storage? A. Yes, sir.

Q. What is your rate? A. Power rate.

Q. What is your demand charge? A. They are giving us thirty-one I believe.

Q. How much do you demand? A. We pay so much for all that meters, and then we pay our service charge.

Q. How do you get a different rate?

Mr. Smith.—A man who goes around with a little instrument and listens-in, establishes that.

Mr. Thompson.—The first bills would be \$13.50, and \$1.50 per horse-power for demand.

Witness.—We go on the wholesale rate.

Mr. Smith.—Instead of capacity charge, this is a demand charge.

Mr. Thompson.—What your demand is?

Witness.—Yes, sir.

By Mr. Smith:

Q. How much is your demand? A. From 34 to 52 and ——

Q. And in addition to that they charge you 1 cent a kilowatt for all you use? A. Yes, that's it.

Q. You have how much capacity?

Mr. Thompson.— In Middleport it is a straight rate of 1 cent; and it is a profitable contract too, on which the company is paying a dividend.

By Mr. Smith:

Q. Go ahead with the next month. A. The next is April. Under the old rate our consumption was 5,323, the gross cost \$83.54, service \$9, making the total \$92.54; and that, with a discount of \$20.88, leaves \$71.66 as the net cost for that month. Under the new rate our consumption was 5,867 kilowatt hours and gross cost \$58.67, service charge \$40.75, making the total cost \$99.42, which, with a discount of \$5.75, leaves \$93.67. Under the new rate it cost us \$22.01 more to operate that month.

Q. For what extra service? A. The current consumed was about 430 kilowatt hours more under the new rate.

Q. Four hundred kilowatt hours more, at a cost of \$20? A. Yes, sir, \$22.01.

Q. Those 400 kilowatt hours, that cost you \$22.01, have a bill price of one cent each, or \$4? A. Yes, sir.

Q. How about the month of May? A. In May, under the old rate, we consumed 3,686 kilowatt hours at a gross cost of \$66.98, and a service charge of \$6, making the total \$72.98, which, allowing a discount of \$16.74 would leave \$56.24 as the net cost. In 1915, in May we consumed 5,423 kilowatt hours, at a gross cost of \$54.23, and a service charge of \$52.75, making a total of \$106.98, from which was deducted a discount of \$7.75, leaving the net cost to us of \$99.23. That was \$42.99 in excess of what we paid a year ago.

Q. For how many excess kilowatt hours? A. About 1,800.

Q. Which would have a bill value of \$18? A. Yes, sir.

Q. How does the whole season line up? A. Taking the whole season, the same months, in 1914 and in 1915 — we had to pay \$108.97 more in 1915 than we did under the old rate in 1914, and under the old rate we used 2,936 kilowatt hours more than we did under the new rate.

Q. They charged you \$108 for not using the 2,900 kilowatt hours? A. Yes, sir, that is it; 2,936.

Q. We will have to concede that that was an inducing feature to use electricity.

Mr. Thompson.—We will take your factory to Middleport, and I will promise to give you that one-cent rate. In comparing your rate with the rate now obtained by them, I am simply showing the people of the city of Lockport that you have got to have some real, sensible, intelligent slant at the situation. This thing is not right. This rate is not fair, as it is shown so far. It may be a mistake of course, but so far I can't see any justice in it at all.

Mr. Smith:

Q. Can you give me the maximum kilowatt use in the height of your electric necessity during the summer months? Take some of the high-use months and tell me how many kilowatt hours per month you use under the old system.

Mr. Thompson.—The Middleport Company buys its power for \$20 as against \$16 paid by this company here, too.

Mr. Smith.—Is it a fact, Mr. Chairman, that by reason of your profits you don't want any more customers for fear of getting into a position where you will suffer losses?

Mr. Thompson.—We are anxious to get them all right. Here is Niagara power. You are advertising it on a great big sign up here where everybody coming into the city can see it; \$16 power for Lockport. If you have that power you should give your rate so that you know you get it.

Mr. Smith.—Why, we have right here a ten-car passenger train that must go a hundred miles, and the more passengers you put in it the more it costs to run the train.

Witness.—September and October are our big months. Our consumption for September a year ago was 15,450 kilowatt hour, and for October, 1915, was 14,910.

By Mr. Smith:

Q. Take your memorandum, Mr. Finley. Under this new rate you had a certain use with a certain amount of money for a cer-

tain demand. Now, give me the first month, with the amount of money required for the demand — the kilowatt hours used. A. Six thousand three hundred and forty-seven.

Q. For which you paid a service charge of what? A. Fifty-one dollars and twenty-five cents.

Q. You next month? A. Three thousand and forty-four.

Q. And the demand charge? A. Fifty-four dollars and twenty-five cents.

Q. And your next use? A. Three thousand eight hundred and twenty-two.

Q. With a demand use of what? A. Forty-eight dollars and twenty-five cents.

Q. Next use? A. Three thousand two hundred and ninety-three.

Q. With a demand use? A. Thirty-three dollars and twenty-five cents.

Q. Next use? A. Three thousand nine hundred and sixty-four.

Q. Demand use? A. Forty dollars and seventy-five cents.

Q. In round numbers, your service charge for September next will be \$150? A. It looks that way.

Q. It will figure that way. Your service charge, independent of your use will be \$354.50, on the same basis practically; with a service charge of \$275.75. A. Of course the kilowatts will —

Q. Will be a cent apiece? A. Yes.

Q. And based on your demand? A. Yes, the demand we use in any three minutes during the time. If we are pulling 50 horse-power for three minutes during the day, that would be our use.

Q. There is a meter which has a constant register, is there not, that indicates the pull at any time? A. No; it indicates the amount used; they take the revolutions for three minutes and figure it that way.

Q. I am figuring based on the average pull and peak and demand and charge. On that average your service charge will be about \$150? A. Yes.

Mr. Thompson.—There is no way that you can tell what your demand is except when they come down there with one of these

listening instruments; they tell you after they have experimented with that? A. No; we have no way of telling.

Q. With your regular meter you can read the meter? A. Yes.

Q. They tell you what the demand is and you take their word for it? A. Yes, sir.

Q. It should be measured by an instrument that is left there, and one you can read yourself. I think an instrument should be put in by the company and left there that the user could read; and that matter should have been called to the attention of the Public Service Commission; maybe it was, but if it was I want to know it. Do you know if the expert of the city of Lockport took that into consideration?

Mr. Smith.—No, because that related to electricity.

HOWARD M. WITBECK, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. I am.

Q. Have been for how long? A. Twenty-five years.

Q. Ever occupied any official position in the city? A. Mayor once, and was a member of the board of education for several years.

Q. What is your business? A. Manufacturing flour.

Q. In one or more locations? A. Two, in this city.

Q. Were one or both of those affected by the change in rates of the Lockport Light, Heat & Power Company? A. One only.

Q. Which was that? A. The Thompson mill.

Q. Have you evidence with you, or are you in a position to inform the Committee as to the effect of the change in rates on that mill? A. Mr. S. N. Cook called one day when I was out of town and took the receipts, and said he would return them; I called him up and he said the secretary had them, or that Judge Hickey had them.

Q. Can you tell the general effect on your company?

Judge Hickey.—I think I have them at the office.

By Mr. Smith:

Q. Would you be willing to wait a few minutes, Mr. Witbeck, and let Judge Hickey get those papers? A. Yes, sir.

WILLIAM A. RICHMOND, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport, Mr. Richmond?
A. Yes, sir.

Q. And you have been for many years? A. Why, nearly fifty years.

Q. And in what business have you been engaged? A. I was engaged in manufacturing machinery, but I am not now.

Q. Operating a plant where? A. Across the canal, right over there.

Q. For the benefit of the stenographer, I will state that it is located on Gooding and Caledonia streets. Have you occupied any official position in the city of Lockport? A. Yes, I was mayor, water commissioner, school commissioner and several other things.

Q. Have you occupied any position under the State or national government at any time? A. Yes; I was collector of customs at Niagara Falls from 1895 to 1899.

Q. Mr. Richmond, the question of the right of the Lockport Light, Heat & Power Company to capitalize, and, if they have the right to capitalize, the extent to which they should capitalize the right to use the 20,000 horse-power obtained from the International Power & Transmission Company, is under discussion before this Committee on the question of rates. It will be necessary to make some inquiry of you in regard to that matter. You were a member of the International Power & Transmission Company?
A. I was a stockholder and a director.

Q. And that International Power & Transmission Company, as I understand it, if correctly, was taken over for the purpose of carrying the right under that contract? A. Yes; it was taken over for the purpose of bringing cheap power to Lockport.

Q. And for the purpose of carrying that contract right? A. Yes.

Q. How many stockholders were there in the International Power & Transmission Company after it had located itself in the city of Lockport in that way? A. Fifteen or sixteen.

Q. How many of those fifteen or sixteen were the original so-called directors of the Niagara, Lockport & Ontario Power Com-

pany? A. Ten stockholders, original stockholders of the Niagara, Lockport & Ontario Power Company; each of those ten, or their heirs, were also stockholders in the International Power & Transmission Company.

Q. To what extent? A. They were all elected; I have forgotten the amount of stock; then there were six others.

Mr. Thompson.—You will find their names in a certain chapter of the Laws of 1894.

A. Yes; those are all dead but three.

Mr. Smith:

Q. But their interest was preserved? A. Yes; their heirs came in.

Q. And those three now living are Mr. Higgs, yourself and Chauncey Dunkleberger? A. Yes.

Q. You don't remember the amount of stock each held? A. I don't recollect whether it was a thousand dollars or ten thousand dollars.

Q. You don't know it, as a matter of figures? A. No.

Q. But, so far as the original directors of the Niagara, Lockport & Ontario Power Company are concerned, the amount was divided into tenths? A. Each had one-tenth, and there were two others who had a little and there were three or four who had small amounts.

Q. The stockholders of the original Power & Transmission Company got a small interest in the contract by coming in and using it as a carrying medium, as you state? A. Yes.

Q. There came a time when that International Power & Transmission Company turned over to the Lockport, Light, Heat & Power Company its interest in that contract, and incidentally, and as a consequence, the interest in the company? And, as a matter of fact, the International Power & Transmission Company had nothing but a very small line from Hinman over to the Federal mill? A. Yes; the common council would not give them permission.

Q. What other interest or estate or property did they have except that line and this contract? A. None that I know of.

Q. When that transfer was made to the Lockport Light, Heat & Power Company, what did you receive for your interest? A. I don't know that there was any transfer made to that company; I only know that I sold my stock.

Q. Assuming — and we will not charge you responsible for the transfer — assuming the stock was transferred in blank, what did you get for your stock? A. Fifteen hundred dollars.

Q. Had you the same impression or information or suspicion? A. I may say that I had more when I transferred the stock; I had more then than I had received; two of them had sold out and I had acquired some of their stock; I had the same as Mr. Higgs.

Q. You had 13 per cent plus? A. No, not 13; I had eight per cent of all that was issued; Higgs made a mistake; he was figuring on the Niagara, Lockport & Ontario Power Company; in that each one owned one-tenth; but in the International Power & Transmission Company each had an equal amount and there were two others who had an equal amount, and three or four who had small amounts.

Q. And for your 8 per cent you got \$1,500? A. Yes.

Q. You heard Mr. Higgs' testimony? A. Yes.

Q. By reason of the fact that he had built the power line and taken care of the matter personally, he got more than the others? A. I assume he got more; I don't know what the others got, whether more or less.

Q. Attempting to make figures last night, as a result of Mr. Higgs' testimony and to compare it with what we assume is the amount that that contract cost the Lockport Light, Heat & Power Company, we find that on his statement there would be a discrepancy between the cost to the Lockport Light, Heat & Power Company of the contract, at the prices paid, and the amount at which they attempt to capitalize it or to obtain income from it. Your statement makes that position a little bit more aggravated; because you got more for your 8 per cent than he did for all of his. The capitalization, or the amount on which they attempt to earn a rate of income, is so far in excess of that that I am under the suspicion that they may have attempted to capitalize the entire transaction from its inception, and you, being acquainted with the conditions, and being one of the directors of the Niagara, Lockport & Ontario Power Company, can you —

Mr. Thompson.—Chapter 722 of the Laws of 1894 is an act to incorporate the Niagara, Lockport and Ontario Power Company; that act has never been amended; it stands now just as it did then. It provides in the first section that John E. Pound, William Richmond, Chauncey E. Dunkleberger, Thomas Oliver, Isaac H. Babcock, William H. Higgs, Patrick F. King, James K. Perry and Charles J. Ferrin, of Lockport, in the State of New York, and such other persons as they may associate with them under the provisions of this act, shall be and hereby are constituted a body corporate. Then it provides that the capital stock shall be fixed by the directors thereof, not exceeding ten million dollars, and that the persons named shall be the directors; these men are simply provided in this act to be the directors for the first year; the act provides that there shall be nine directors, who shall constitute the board of directors.

Witness.—The board of directors fixed the stock of \$1,000, and each director paid in \$100, and then there was another one, that was Cocker; he was taken in.

Mr. Smith:

Q. These men, at the time of the passage of this act, as I understand it from Mr. Higgs in his testimony yesterday, and largely from personal knowledge, were of the business men's association? A. Yes.

Q. They were all members of that institution? A. I suppose they were.

Q. At one time there was considerable agitation about the Niagara river waters for power? A. Yes.

Q. These men, as a matter of fact, Mr. Richmond, started out rather in the nature of a committee of this business men's association? A. I know the act was got by the business men's association, but when they started out they organized the company and subscribed the stock.

Q. Before they started out and organized the company, the business men's association of the city of Lockport had interested itself in an attempt to get a portion of this power for development purposes locally, and that activity resulted in the passage of this act in which the persons named in section one were selected by the

business men's association of the city of Lockport. That is true, is it not? A. Yes.

Q. At that time John E. Pound had been mayor of the city of Lockport and was a United States commissioner? A. Yes, sir.

Q. William Richmond had been mayor of the city of Lockport, and was then collector of customs at Niagara Falls? A. Not just at that time.

Q. Chauncey E. Dunkleberger was surrogate of Niagara county? A. He had been.

Q. Thomas Oliver had been mayor of the city of Lockport? A. Yes.

Q. Isaac H. Babcock was president of the savings bank? A. Yes.

Q. W. H. Higgs was a prominent business man? A. Yes.

Q. P. F. King was, or had been, surrogate of Niagara county? A. Yes.

Q. J. K. Perry was a prominent business man in the city? A. Yes.

Q. C. F. Ferrin was a prominent business man and somewhat interested in the affairs of the community? A. Yes.

Q. There had been no company named, or no company organized up to the time of the passage of the act? A. Not that I know of.

Q. These men stood in relation of a selected committee of the business men's association, to have their names put in the act when passed? A. Yes.

Q. Do you know the reason for that? A. The reason for it?

Q. Yes, the reason for the selection of those names? A. The names were selected by a committee of the business men's association; they were quite a large committee and each one of those wrote down the names of those whom he thought the most suitable, and those receiving the highest number of votes were selected.

Q. It was rather in the nature of a vote of the association? A. It was a committee of the association that did this, and I assume it was referred to the association, but don't know whether it was or not; or whether the association appointed this committee with power.

Q. What is your recollection? A. I don't remember whether it went back to the association or not. I think it did not go back; they, the committee, had the power.

Q. Do you know the fundamental reason why that was done, or did you ever hear? A. Why what was done?

Q. Why the committee was selected in this way, and these men being put in as incorporators in an act of this kind prior to the organization of the real company? A. No.

Q. Did you ever understand that by reason of the fact that the municipality was not permitted to go into the business of developing power, that the business men's association selected a committee which would be a substitute for the city? A. No.

Q. Or that the business men's association—— A. It was not contemplated that the municipality should have anything to do with it.

Q. Did you ever understand that by reason of the fact that the business men's association, not being incorporated and incapable of being incorporated, for the development of power, required the designation of a selected committee who would become incorporators, to overcome the objection? A. No; I didn't so understand.

Q. What did you understand was the reason that you got into this act? A. I understood that that would be the easiest and proper way to do.

Q. What did you understand was the reason for your selection, to be named in this act by a committee of the business men's association of which you were a member? A. The only reason I knew of was that it was stated in the business men's association that that was the proper way to do.

Q. In order to accomplish what purpose? A. In order to accomplish the object of bringing the canal from Niagara Falls to Lockport.

Q. And it was the business men's association that was making the effort? A. Yes.

Q. And they selected this committee to be named in the act to accomplish that purpose? A. Yes.

Q. And the act was passed? A. Yes.

Q. And became chapter 722 of the Laws of 1894? A. Yes.

Q. What happened after the passage of that act? A. These directors met and organized a company with a capital stock of a thousand dollars, and each director took one share at one hundred dollars each, and each paid in the one hundred dollars; not all paid in at once; and that other share was taken by a man named Parker, a lawyer, I think.

Q. Quincy G. T. Parker? A. Yes.

Q. Why was it taken by him? A. I don't know why he was selected.

Q. He was not named in the act? A. No.

Q. Was he a member of the Business Men's Association? A. I suppose he was, but I don't know.

Q. That company made some tentative efforts to accomplish the objects of the Business Men's Association, to get a canal from Niagara Falls to Lockport to develop power? A. Yes.

Q. And there came a time when some parties did come here with an apparent desire and capacity to do the work? A. Yes.

Q. By reason of which certain contracts and agreements were entered into by this company, which had been organized as a result of the Business Men's Association efforts, with the object to force, as a matter of business dealing, the so-called promoters to produce the original intention or a canal to the city of Lockport? A. I don't know what you mean by force.

Q. Well, I mean, to put them in a position where they could make demands. A. The company held in its own hands the power to put through the original intent.

Q. Those original contracts were made, so far as the Niagara, Lockport & Ontario Power Company and its stockholders was concerned, and its officers and directors, without any amendment or consideration other than the development of the canal to Lockport? A. That was all.

Q. And the officers and members of this concern recognized it from its institution as a public spirited movement to get a canal to Lockport and develop the city? A. Yes.

Q. There came a day when, by amendments to the general statutes of the State, a company with a charter such as this had the power not only to develop water power for electric purposes but had the power to purchase from existing companies and transmit? You remember that, don't you? A. Yes.

Q. And as result of that condition the men who came here apparently with the ability and capacity to promote this particular project expressed a desire to use the charter for the newly created purpose of transmission? A. Yes.

Q. And negotiations were had with the then Niagara, Lockport & Ontario Power Company? A. Yes.

Q. Whom by? A. By the promoters.

Q. The Niagara, Lockport & Ontario Power Company were negotiating with them? A. Yes.

Q. Do you remember the occasion when the people who were willing to build the line, and expressing their desire to temporarily use the charter which they had not in possession but in contract for that purpose, had some negotiations with the city of Lockport and the Business Men's Association as to what they were willing to do for the city of Lockport for its equity in that Niagara, Lockport & Ontario Power Company contract? A. Negotiations, but not with the city of Lockport, I think.

Q. So far as your recollection goes then, there was no negotiation with the officers and representatives of the city of Lockport on this matter? A. By these promoters?

Q. Yes. A. Why, I don't know. I would not say there was not.

Q. I mean the promoters and stockholders.? A. Yes, I —

Q. Do you recollect this proposition then — For the purpose of continuing and carrying out the public spirited name had by the Business Men's Association at the inception of this contract, that the Niagara, Lockport & Ontario Power Company proposed to grant to any corporation which might be formed for that purpose the privilege of taking, from the to-be-created transmission line, a quantity of power averaging from ten to twenty thousand horse-power at a cost of \$16 a horse-power, and that for the purpose of inducing manufacturers to come to the city of Lockport that they would pay yearly the sum of \$3,000, and that in addition to the \$3,000 they would pay fifty cents for each horse-power used in excess of 6,000, and this sum of money so obtained to be used for the purpose of advertising the city of Lockport and developing the community? A. Do you mean, do I recollect that such contract was entered into?

Q. Was proposed. A. I don't remember any such contract; there were lots of contracts proposed but never went through.

Q. Do you ever remember a contract of that character being proposed by the Niagara, Lockport & Ontario Power Company with the board of trade? A. I had nothing to do with the board of trade.

Q. But you had with the Niagara, Lockport & Ontario Power Company. Do you remember such a contract? A. I don't remember; although I say there may have been, for there were a lot of contracts proposed.

Q. But you never remember such a contract as that being proposed? A. I don't know; no.

Q. Do you ever remember the matter being publicly discussed in the city of Lockport in the press at one time, as to whether or not the taking of this contract for this so-called ship canal power would be quite a satisfactory solution of the difficulties and a fair substitute for the city's interest in the Niagara, Lockport & Ontario Power Company? A. I don't recollect but it is very likely that it was; there were a great many things talked of, but usually nothing came of them.

Q. I will read, for the purpose of the record, the following:

To the Mayor and Citizens of Lockport:

Your Committee heretofore appointed to consider a proposition of cheap power, made by the Niagara, Lockport & Ontario Power Company for the benefit of the city of Lockport, and its inhabitants, respectfully submit the following report:

In the discussion of this subject certain facts must be conceded. These facts as they appear to your Committee, are as follows:

1. The Charter of the Niagara, Lockport and Ontario Power Company has passed from the hands of the original directors or trustees appointed for the benefit of the city, so that these trustees as such have no control over the charter, or the uses to which it shall be put.

2. The original directors of the Niagara, Lockport and Ontario Power Company, being all Lockport men, entered into a contract with one William Luther, to construct a canal from the Niagara River to this City. Such contract was executed by said original directors in their capacity as directors, and also as individuals. As directors they have no control over this Luther contract, because as such they have been succeeded by the present directors of the Company, and while some of them maintain that as individuals they have the power to enforce such Luther contract, no attempt has been made, nor do they profess a willingness to attempt to enforce said contract for the benefit of the city.

3. That the proposition submitted by the Power Company is intended as a substitute for any possible right which the original directors, as individuals, might have to cause the enforcement of the Luther contract in relation to the immediate building of the Canal.

4. That the advantages claimed for the substitution are:

A twenty-five per cent reduction in cost of power for light and heat and manufacturing power in blocks of less than one hundred horse power.

The immediate availability of not less than ten, nor more than twenty thousand horse-power in blocks of one hundred horse-power or over, for manufacturing purposes, at \$16 per horse-power.

In addition, the Power Company offers to contribute \$3,000 annually, to be used for the benefit of the city, in the way of advertising it as a desirable location for factories, and in inducing factories to locate in the city, and a further sum of 50 cents per horse-power for every horse-power used in excess of six thousand horse-power.

5. That the charter of the Niagara, Lockport and Ontario Power Company is now being exercised to the extent of transmitting electricity as in said charter provided.

YOUR COMMITTEE is of the opinion that the building of the canal to Lockport, under the present possibilities of power transmission, would not necessarily develop the city

of Lockport as a manufacturing center, for the reason that all of the power produced could be transmitted to distant points, where railroad facilities and land values might make manufacturing location desirable; and that the only assured advantage of the building of such canal would be the money spent in the city, for labor and material during its creation, and the profit to be derived by option holders along its route.

YOUR COMMITTEE is of the opinion that at the prices for power set forth in the agreement, the city of Lockport would be enabled to secure power as cheaply as the same can be obtained, either in Niagara Falls, or the city of Buffalo, and that the terms of the agreement would insure the retention of such rates in comparison with these cities.

YOUR COMMITTEE FURTHER REPORTS, that it has carefully examined the matter submitted at a previous meeting in regard to the existence of a contract, whereby the power Company was obligated to secure to the city greater advantages in the way of cheap power than those contained in the proposition submitted to your Committee: And we find that the statements that such a contract exists are absolutely without merit.

From the facts at hand, YOUR COMMITTEE, concludes:

1. That an immediate reduction of twenty-five per cent in cost of power and lighting within the city of Lockport, is desirable.
2. That a minimum of ten thousand horse-power delivered according to the terms of the proposed contract, would be of material advantage to the city of Lockport.
3. That these immediate advantages outweigh the remote possibility of the power canal to this City ever being constructed, and are an advantageous substitute for such possibility.
4. That the claim of some of the original directors, that the Luther contract for the construction of the Canal to the city in this individual capacity is still valid and enforceable, is without merit.

YOUR COMMITTEE determines, that, in order to secure the advantages of the proposition submitted by the Power Company, there will be required:

1. The signatures of the men composing the original directorate of the Niagara, Lockport and Ontario Power Company to the proposed agreement.

2. That in addition thereto and coincident therewith, such original directorate shall make such necessary agreement and arrangement as will secure in perpetuity to the city of Lockport, the advantages of the arrangement proposed by the Power Company, as against any individual claim to such advantages.

YOUR COMMITTEE further reports, that it is without the power of the Committee to obtain the signatures of such original directors, and that during its frequent meetings it has solicited the attendance of such original directors, and that at no time has it been attended by any thereof, except that J. K. Perry attended one meeting, and the Honorable William Richmond attended another.

That no expression in approval of the proposed agreement has been received from any member of the original directorate, except that the representatives of the Pound and Oliver interest indicate a willingness to act in accord with public sentiment upon the subject.

YOUR COMMITTEE finally recommends the acceptance of the proposed agreement in the belief that it will secure to the city of Lockport, the greatest possible benefits now obtainable from the Power Canal Charter, which has forever passed from the control of our citizens.

All of which is respectfully submitted.

(Signed) CHARLES HICKEY,
C. G. SUTLIFF,
RANSOM SCOTT,
W. A. WILLIAMS,
MARCUS RUTHENBERG,
J. FRANK SMITH."

Q. Did you ever hear of that before? A. I have forgotten it; now that you speak of it I remember something of it but had forgotten it. What committee was that? What body did that represent?

Q. I couldn't tell you the official title of it now.

Mr. Thompson.—Who is that?

Witness.—Who are they a committee of?

Mr. Smith.—A committee of citizens charged with responsibility of looking up the situation.

Mr. Thompson.—Was a committee appointed by the mayor.

Witness.—Appointed by the mayor? Yes, I do remember there was something of that kind, but how it came about I don't know now.

Mr. Smith, continuing:

Q. Let us test the *bona fide* character of it. Did you ever, as one of the original directors, sign an agreement that you would accept, for the benefit of the city of Lockport, as indicated in that report, the offer of the Niagara, Lockport & Ontario Power Company for from ten to twenty thousand horse-power at \$16, with a fifty-cent rebate? A. No.

Q. Did you ever, in whole or in part, receive from the Niagara, Lockport & Ontario Power Company a contract or agreement whereby you should receive, or you and your associates should receive, from ten to twenty thousand horse-power, at Hinman Station, at \$16 a horse power, with a rebate of 50 cents? A. I think they did give such an agreement to the original stockholders, but the 50-cent rebate I don't remember of.

Q. The power was \$16? A. Yes.

Q. And the Ontario Power Company did carry at one time a power agreement, but it was with the original stockholders of the Niagara, Lockport & Ontario Power Company, as you say, as individuals? A. Yes.

Q. And having acquired it, as individuals, it was never transferred to the citizens of the city of Lockport or to any organiza-

tion which stood in the position of representing their interests? A. No.

Q. And that is the contract which subsequently came into the so-called International Power & Transmission Company? A. The International Power & Transmission Company received that contract; but whether they got it from the company or from the individuals I don't now recollect.

Q. For the purpose of determining whether, between the passage of chapter 722 of the Laws of 1894 and the present day, there is any disbursement of fund which would justify the present holder of that contract for capitalizing the rate in excess of the present rate for power and service in the city of Lockport, I ask you what did you receive for your signature to the agreement that you would release your rights to the Niagara, Lockport & Ontario Power Company, other than your interest in this twenty thousand horse-power? A. I didn't receive anything.

Q. No money consideration? A. No.

Q. Did the company receive any money consideration? A. The Power Company?

Q. Yes. A. Not that I know of.

Q. Did the individual directors receive any? A. Not that I know of.

Q. At the time that this contract was executed whereby the ten individual directors and the estates of those who were deceased came into possession of this twenty thousand horse-power at \$16, you say no money passed in addition to it? A. Not to my knowledge.

Q. Was this twenty thousand horse-power at \$16 given as the only consideration for those signatures? A. That was all that was talked of.

Q. Was that given as a consideration? A. I understood so.

Q. And the only money that you have ever received in relation to the development of power in the city of Lockport, under the Niagara, Lockport & Ontario Power Company charter, directly or indirectly, as a director of the company, through stock or dividends, or as an individual holder, was the \$1,500 for the sale of the stock? A. Yes.

Q. Were you ever offered any other money? A. None, except some money that I received at different times in payment of expenses.

Q. How much have you received in payment of expenses? A. Not a great deal.

Q. How much? Those expenses might be capitalized, the same as cost of stock. How much, approximately? A. Five or six hundred dollars, possibly; expenses to New York and to Albany.

Q. Would it exceed a thousand dollars, in any event? A. It might have been.

Q. Would it exceed two thousand in any event? A. I would not say about that, but it would not be more than two thousand at the outside.

Q. You have been pretty active in the community, Mr. Richmond? A. Yes.

Q. I presume the rumors that circulate in the community have come to your ears, as regards payment of money at the time of those signatures? A. Yes.

Q. Did you ever make any enquiries about it? A. I knew I didn't have any, and I didn't suppose any one else had any.

Q. Having discovered that no money had been paid to you, and having discovered that somebody had received a considerable block of capital, did you make any effort to discover the truth of that report? A. No.

Q. Did you ever talk with John E. Pound about it? A. I don't remember.

Q. Did you ever talk with the Honorable Cuthbert W. Pound about it? A. I didn't talk with anybody about it; I knew the rumors were false so far as I was concerned, so didn't bother about it.

Q. No justification for capitalizing this contract, so far as you are concerned, except fifteen thousand received for your stock and two thousand for expenses? A. That is all.

Q. Would your having received \$2,000 for expenses have justified the same being received by others? A. My expenses were greater than some others, but Mr. Higgs did more than I did.

Q. You were present at the meeting of the company which paid the expenses? A. The company paid my expenses to New York;

the people who were trying to get the company on its feet were —

Q. You got your expense money at the same time you got your \$1,500? A. No; the \$1,500 was a sale.

Q. This company which was trying to put the Niagara, Lockport & Ontario Power Company through, had the directors of the existing Niagara, Lockport & Ontario Power Company go to Albany and other places, and as a result of going to those places, they paid the expenses of that company? A. Yes.

Q. You went to Albany several times in that matter? A. Yes.

Q. Did you go to Albany to assist in the passage of the legislation which should permit water-power development companies to transmit electricity? A. Yes.

Q. What interest as a director, did you have in having the right to transmit electricity given to such a company? A. I understood you to say that I went to Albany when the original act was passed.

Q. No; I am speaking now of the later act; did you go to Albany in that matter? A. Yes; the only interest I had was to get the company started and get these people to take hold of it; they claimed unless the charter was changed they would not take it; my interest was to get them to take it and bring the power to Lockport.

Q. The change in the charter was not a proposition of bringing the power to Lockport, was it? A. They claimed they would not be able to finance the proposition.

Q. They claimed it would not affect the building of the canal? A. Yes.

Q. And commenced it? A. Yes.

Q. And the commencement is out here in the country? A. Yes; they wanted the charter changed so they could transmit this power and then build the canal later.

Q. Was there any other consideration than money, that you have stated was not a consideration so far as you were concerned, that passed between these men and the original directors of the Niagara, Lockport & Ontario Power Company? A. Nothing only this agreement to furnish twenty thousand horsepower.

Q. Nothing else ever came to your knowledge? A. No.

Q. Or in which you participated? A. No.

Q. Nothing of money or otherwise? A. No.

By Mr. Lawson:

Q. As a New York City man, I am not quite familiar with the history of what has been going on up-State. We have conditions in New York radically different from what you have here. As I understand this situation, the city of Lockport is in its present difficulties concerning rates because of the fact that somebody outside of the community has gotten hold of the instrument by which your people here want power for the purpose of manufacturing? A. Yes.

Q. Originally, as the history has been given this morning, the citizens got together and delegated ten of their number to form, under this act of the Legislature, a corporation and you eventually became stockholders? A. Yes.

Q. As I view it, you were really trustees for the benefit of the inhabitants of the city? A. Yes.

Q. You were called upon to put up \$100 as your share of the stock? A. Yes.

Q. You went right ahead and did something to perfect your charter, and did something? A. We did not do anything except to try to get people interested —

Mr. Smith.— Yes, they dug a bath tub up here in the country.

Witness resuming — It was the intention of the men who controlled the International Power & Transmission Company to bring it into Lockport and distribute it at low rates; but when they applied to the common council they refused and would not let the International Company bring it in; finally it was alleged that the Simonds people would not locate here unless they could get a perpetual contract for cheap power, and then parties came and wanted to purchase that with a view of getting these Simonds people here.

Q. Was it not the original intention of the inhabitants of this city to go right on and do what the present corporation is doing at this time? A. What present corporation?

Q. The Lockport Light, Heat & Power Company. Was it not the original intention of the citizens of the city to have the Niagara Lockport & Ontario Power Company chartered by the Legislature and have just the service this corporation is getting to-day?

Mr. Moss.— If these ten men had gone ahead and perfected this organization, this city would not be in the position it is in to-day with this company.

By Mr. Lawson:

Q. What I mean is this; if your company had gone ahead and perfected the work for which it was chartered by the Legislature instead of seeking promoters and selling out their stock at a great deal more than they put in originally, this city would not be in the position it is in to-day, as regards the price of power. A. The company did not sell out the stock.

Q. What did you put in? A. One hundred dollars.

Q. And got \$1,500 out? A. Didn't directly receive anything.

Q. The city didn't get anything? A. No.

Q. Stockholders were trustees for the city, weren't they? A. If the city, through its common council would not permit the International Power Company to bring in the power, the company could not bring it in.

By Mr. Moss:

Q. You people overruled the common council? A. I don't know how.

Q. Yes, you did; and then you stepped in and sold out your charter; this thing is interesting to me; why did you attempt to overrule the common council? A. I can only say they refused to permit the company to bring in this power.

Q. Why did they refuse? A. I don't know.

Q. Didn't they know the Power Company was going to do just what it has done? Didn't they know that the same condition would arise that has arisen? Didn't the common council want to control the city, without letting strangers in to eat up the good things of Lockport? A. I don't know what they wanted to do; they would not let the International Power Company in, but did let the others in.

Q. Did you sell your stock at the request of the Business Men's Association? A. No.

Q. At the request of the successors? A. It didn't have any successors.

Q. Did you confer with the old members before you sold? A. No.

Q. Did you confer with the citizens of Lockport about selling your stock? A. No.

Q. Did you confer with the mayor about it? A. No.

Q. Did you confer with the common council about selling it? A. No.

Q. Did you tell the members of the common council you were going to sell it? A. No.

Q. Did you tell the citizens? A. No.

Q. Did they know it? A. No.

Q. Why didn't you let them know it? You were a trustee, and that was all. A. I don't so understand it.

Q. You didn't so understand your position? A. No.

Q. You were not going in to let them know; you entered into these negotiations to arrange a way by which you could dispose of your stock without taking the people of the city of Lockport into your confidence, didn't you? A. No.

Q. Didn't it occur to you that if you told the common council of the city of Lockport that you were going to do thus and so, they would get up and do something? A. I don't know.

Q. What did you do with the \$1,500? A. That was mine.

Q. To whom did you render an accounting, as trustee? A. I was not a trustee.

Q. You said you were — as a prominent and reputable citizen of Lockport you were chosen a trustee? A. No.

Q. What did you do with the money? A. I spent it, I suppose; used it.

Q. You say that you spent all of this \$1,500, and that you were entitled to it; now, what kind of an accounting have you ever rendered to show that? A. I don't know that I had to make an accounting.

Q. A trustee is always bound to render an account; an unexpressed trust gives the trustee a greater responsibility to make

an accurate accounting to the people that allowed him to get into a good thing. A. This is not a good thing.

Q. Who knows that? This is the first time you have ever told anybody about it, isn't it? A. Yes.

Q. I have heard all of your testimony, and listened to it, and I desire to say a word; it seems to me that you lobbied for this International Company a good deal. A. I didn't lobby for this company.

Q. You spent \$2,000 for something; for the promoters. A. I wanted to get these people to take it.

Q. Well, what did you do for that \$2,000? A. It wasn't \$2,000.

Q. Well, let's say it was \$2,000; it was for some of your expenses; let's call it \$2,000; what was it for? A. The expenses were traveling expenses.

Q. Did you travel \$2,000 worth? A. I did not.

Q. How far did you go? A. Why, I don't know.

Q. You went to Albany, you said? A. Yes.

Q. Did any other members of this junket spend as much as you did? A. I don't know what anyone else spent.

Q. Well, how many of you went at any one time? A. Four or five.

Q. Did you pay the expenses of the whole party? A. No.

Q. Every man paid his own? A. Yes.

Q. Did you keep an account of it? A. At the time.

Q. What has become of the account? A. Probably been destroyed.

Q. Why? A. Because there was no object in keeping it.

Q. Why was there not an object in keeping it — if people say mean things about you on account of it? A. I don't know.

Q. Was it in a book? A. No.

Q. What was it in? A. Not in anything special.

Q. Only in your memory? A. Yes.

Q. Then you destroyed your memory? A. I didn't say so.

Q. You mentioned the word "destroyed;" now, what was destroyed? What did you possibly destroy? A. You inquired what became of the account of these expenses and I said I suppose I destroyed it.

Q. Yes; and you said possibly it was destroyed. Was it in a book or on paper? A. I don't remember.

Q. Didn't you keep any memorandum? A. Possibly I did.

Q. Did you or didn't you? A. I don't remember.

Q. Didn't this company that paid you \$2,000 ask you to tell what you spent? A. It might have been not more than \$500.

Q. Now, don't you know whether you got \$500 or \$2,000? A. Why, I —

Q. How long ago was this, anyway? A. About twelve years ago or so.

Mr. Thompson.—It was in 1904 or 1905.

By Mr. Moss:

Q. Can't you tell whether you got \$500 or \$2,000 or \$5,000 for your expenses? A. No.

Q. How can you prove that you didn't get \$5,000 for expenses? A. How can you prove that I did get any?

Q. A man dealing with a trust ought to keep some kind of an account; those dealing with trust funds should make some accounting; didn't you know whom you were dealing with? A. I knew, yes.

Q. Did you think you were doing the right thing for the people of the city of Lockport, for you to be going down there to Albany lobbying? A. I thought they would build the canal.

Q. Did they know you were getting paid for it? A. I don't know.

Q. Simple thing to run to Albany sometimes; did the people of the city of Lockport get their \$500 to \$2,000 for expenses, and promoters?

Mr. Thompson.—These questions have been asked by Mr. Moss and by Senator Lawson voluntarily. None of the circumstances have been explained to them; they have asked them all just from sitting here and hearing your testimony. This charter, under the Laws of 1894, expired in 1904, unless work was commenced before the expiration of the ten years. In 1904 I represented this district in the Assembly, and a bill was sent down to extend the life of this charter for ten years. The people of the city of Lock-

port were interested, and we represented the people; believing it was for the benefit of the city of Lockport, we attempted to pass legislation extending the life of this charter for ten years. It met with opposition — pretty nearly a killing opposition — because the opponents, who were at that time said to be the officers of the Niagara Falls Power Company, sent out the theory that it would take so much water from Niagara river that it would harm the beauty and splendor of the falls. The bill passed both houses and was vetoed by the Governor. It was my first year in the Assembly, and the Legislature carried with it a very generous power of condemnation. These officers could have condemned anything in the State of New York, except, I guess, the capitol; and I guess at that the bill included the capitol and excluded some lands in the Adirondacks. They were local men and we had great confidence in them, and we regarded this largely as a local bill, this power bill. It was an act for the people to take water from the river and bring it down here. The Governor vetoed it. And then the next year — it seems there is no clause in this act that guaranteed that the city of Lockport would get the benefit of it. So in 1905 — they in the meantime started to dig up here a little bit, and that was supposed to have technically complied with the charter. So, anyway, I refused to handle the legislation unless they would amend it so that it would require the canal to be built. That they refused to do, and so I opposed it, on that account alone, knowing then it would not be a local proposition because they refused the reasonable amendment. It was during that time that Mr. Richmond came to Albany, and the local common council, and everybody that was interested. Mr. Smith was then corporation counsel. So that legislation was defeated. They had started to build the canal. Then, under this act, there was some people who wanted to take it up for the power it had, apparently, to build a transmission line from Niagara Falls through to Syracuse, and they wanted the benefit of this charter, and they wanted to get people under this charter, and their lawyers regarded that you nine gentlemen, or the heirs of such as were not living, had some proprietary interest in this, so they take an agreement from you, signed by all of you as directors, transferring your rights to this new concern. You signed that agreement as directors and also as individuals.

Witness.—We were not directors.

Mr. Thompson.—But you signed it both ways.

Witness.—No. We had turned over our stock, and they agreed that they would build the canal.

By Mr. Thompson:

Q. So that there was a time that you got an agreement which you signed as directors and as individuals both, but was it regarded, as a matter of law, that you had any interest in this as individuals, or only as directors? A. I understood it was as individuals.

Q. You had signed an agreement which was supposed to transfer your rights by virtue of your being mentioned in this act of 1894. Then later, some lawyer concluded there was a cloud on your title, and they wanted to get your signatures as individuals. About that time they made a proposition direct to the city that they would guarantee in perpetuity twenty thousand horse-power at \$16, and, in conjunction with that, they agreed to pay the city \$3,000 a year, provided the city would prevail upon you gentlemen, and the heirs of such as were not then alive, to sign off the claim they might have. Do you remember that agreement, Mr. Richmond? A. I don't remember.

Q. Didn't they make that offer—to pay \$3,000 a year, in perpetuity, if you people would sign off? A. I don't recollect it.

Q. But the individuals never did sign off? A. No.

Q. And the city never did get \$3,000 a year? A. No.

Q. And the Lockport Gas Company has that 20,000 horse-power? A. Yes.

Q. At \$16 a horse-power, with that privilege. You are not selling power any cheaper here in the city of Lockport than we are in Middleport, where we never had any such advantage as that.

Mr. Lawson.—My understanding, as an outsider, was that these ten men were selected by the citizens of the city of Lockport and acted for them as stockholders of this company, and when you found you could not build yourselves, you undertook to sell to promoters; you sold out to them and received in addition to the money for the stock——

Witness.—Never received any money for stock.

Mr. Moss.—You received \$1,500, didn't you?

Mr. Lawson.—You also received a preferential in the shape of a contract with these promoters that you would obtain 20,000 horse-power at a \$16 rate; you received a preferential over and above any other citizens in this city, you ten men did.

Mr. Smith.—Mr. Chairman, I suggest that we take an adjournment, because I want Mr. Richmond back here at two o'clock. From the reports made by this company for the years 1912, '13 and '14, I find that in the year 1912 they made and sold 17,748,799 kilowatts for \$152,371.04, or an average of 87 cents per kilowatt; that approximately is \$50 per horse-power. In 1913 they manufactured 14,558,530 kilowatts and received \$154,516.16 an average of \$1.06 per kilowatt, approximately \$60 per horse-power. In 1914 they manufactured 11,279,607 kilowatts and received \$152,490.24, an average of \$1.35 per kilowatt, approximately \$80 per horse-power. None of the power cost them more than \$18.

Witness.—I suppose they pay only \$16. They made an agreement with the Niagara, Lockport & Ontario Power Company that they should receive their power at as low a rate as they would sell to any one else.

Mr. Thompson.—If they averaged their load and didn't peak it. And the only difference between the Power Company's contract and the International Company's, is that the International is perpetual and the Gas Company's is for years.

Mr. Smith.—Twenty-one thousand five hundred horse-power at not to exceed \$18 per horse-power, 20,000 of which is at \$16 a horse-power, is the contract of the Lockport Light, Heat & Power Company.

Adjourned to 2 P. M.

SATURDAY 2 P. M.

Hearing resumed, pursuant to adjournment.

WILLIAM RICHMOND, examination continued:

By Mr. Lawson:

Q. Mr. Richmond, since luncheon recess, have you refreshed your mind in any way as to any other consideration which passed for the signing of the individual names of the original nine of the Niagara, Lockport & Ontario Power Company? A. Nothing else but that consideration of 20,000 horse-power. I never heard of anything else.

Q. Did the members of the corporation, as chartered in 1894, take charge of that contract and use power at that price? A. You mean this \$16?

Q. Yes. A. The contract was transferred to the International Power & Transmission Company, and the International Power Company endeavored to get permission from the common council to bring it into the city.

Q. And your contract was transferred by the nine directors? A. No; by the ten stockholders; one of them was not a director.

Q. That contract was transferred to the International Transmission Company? A. Yes.

Q. In consideration for that transfer? A. No, I don't think so.

Q. Was there any agreement, written or otherwise, that these ten stockholders should receive any preference over anybody else from the International Power Company? A. No.

Q. Any consideration? A. I don't recollect.

Q. You are not aware, even as a layman, that a contract without consideration is not a valid contract? A. Yes. I am not a lawyer, and the contract was made by lawyers, and I am not here to criticise their action.

Q. You received no consideration? A. No.

Q. Do you know whether any of your colleagues received any? A. Not to my knowledge.

Q. Did you have a sort of bias as to whether that was a valid contract? A. No.

Q. Then what benefit did the transfer of that contract give to your colleagues, the ten stockholders, for the people of Lockport?

A. As I understood it, the intention was that the International Power Company would bring power to Lockport and sell it for about what it would cost; that was prohibited by the common council; franchise was gotten in the town of Lockport, and there was some power sold in the town of Lockport. So it dragged along and nothing was done for a couple of years. Then came these Simonds people and it was alleged that they would not come here unless they could get permanent power.

Q. Did that contract give the people any preference? A. They were not mentioned in it — not in that contract, as I remember it now.

Q. What was the idea, if you can remember — what was the idea in your making such a contract? A. To obtain 20,000 horse-power.

Q. Who was to obtain? A. The people of Lockport, through the International Power Company.

Q. You say they were not mentioned in the contract. A. They were not.

Mr. Moss.— The people of Lockport would have the privilege of buying it from that Company, but not at a preferential price.

Mr. Smith.— No.

By Mr. Lawson:

Q. Was there effort made to limit the price that those people would charge? A. No; they never got into Lockport.

By Mr. Smith:

Q. Did the proposed franchise contain a set of rates? A. Very likely it did, but I don't know. There was an application made to ask permission to bring the power in. They specified what rates, I think — at what rates it would be furnished, and the council refused.

By Mr. Lawson:

Q. You say the common council refused to grant to your company some privilege. What was that? A. The privilege of

going through the streets with the wires; the same as the Gas Company did.

Q. On what grounds? A. I don't know as there were any grounds mentioned.

Q. Did you endeavor to ascertain? You were interested of course? A. Yes, I have an idea, but would not want to state it because I have no proof.

Q. Did you talk with your colleagues about this idea? A. Most of them.

Q. And did they have ideas that they expressed to you, along the same line? A. Yes.

Q. Did anybody outside of your colleagues express any reason for the common council's action? A. Those whom I heard talk.

Q. Was the reason this — that the common council and the city had already empowered and been instrumental in the formation of this corporation, and that they did not see fit to give you any more power as you did not comply with the charter as granted? A. I didn't hear anything about that.

Q. What was the prevailing idea? A. I am not going to tell that. I may be wrong. It may be the common council were actuated by pure motives.

Q. Did the common council express to you or to any of your colleagues their reasons for refusing? A. No reason, so far as I know.

By Mr. Smith:

Q. It has been the habit of this Committee to suppress ideas, because by expression of ideas we have gotten at some important facts. I was personally interested in that application at the time, as citizen of the city of Lockport. In order that there may be no cloud upon the remaining title, I am going to ask you to tell what the idea of these ten men was. A. I am not going to tell that. I am not going to tell any idea.

Mr. Smith.—I ask the Chairman to instruct the witness to tell what the idea is that he does not want to tell.

By Senator Lawson:

Q. First, Mr. Smith, let me ask this question: Do you, Mr. Richmond, or don't you, know that the councilmen individually

had at some time made the statement that they had given your company all of the powers of capitalization they intended to give it, and they would give no more? A. I never heard that.

Mr. Smith.—I submit, if the Chairman please, that the question submitted by the Senator is entirely too narrow. The fact is that the members of the common council, the official body of the city of Lockport, protested against this company ever getting into the city of Lockport to avail themselves, as a company, of a dollar's worth of the advantage to be gotten out of the appropriation which they were trying to avail themselves of as individuals; and it was a fact in the knowledge of every person who is a citizen here. Mr. Richmond suggested some other idea, and I believe we have a right to his idea, and let the citizens of Lockport hear what these ten directors in their private conferences thought, and let the public charge all that and the fact to establish how much was left of the duty they owed the city of Lockport under this bill of 1894. Let us see what these directors thought.

Mr. Thompson.—The Chair thinks it will place Mr. Richmond in a much better light if he will voluntarily tell his ideas.

Witness.—So far as I am myself concerned I am willing to give my ideas.

Mr. Moss.—Mr. Richmond has very shrewdly conveyed a meaning without having testified. I don't think any intelligent person could hear Mr. Richmond without understanding that he means to suggest that the common council was grabbed. I think that is what is in his mind. If this is wrong, Mr. Richmond ought to correct it.

Witness.—The common council were influenced by the Gas Company; whether they were grabbed or not I don't know.

By Mr. Smith:

Q. Mr. Richmond, don't you know that at the time of that application, there was a generally recognized opposition to the granting to you ten men, or your associates, any privilege in the city of Lockport, in the form of a franchise, which would

permit you to realize on your appropriation of this original charter, and that that was the only reason, or the principal reason, why they would not let you men have such a charter?

A. I don't know it.

Q. You didn't know it? A. No.

Q. Let me call your attention to the fact that you said this morning that they would not let you in, but did let strangers in.

A. Yes.

Q. Why didn't that influence in the same council, and with the same officials, have the same power as with yours? A. The other company had already gotten their franchises.

Q. True. But why not your company? A. I can't tell.

Q. The strangers were allowed to compete with the Gas Company. A. Not strangers, that I know of.

Q. You said they were strangers. A. The Gas Company were strangers.

Q. The Economy Light, Fuel & Power Company were granted a franchise? A. That was afterwards.

Q. Yes, but the same set of officials and the same common council? A. I don't know anything about that. We could not go on without it.

Q. And your suspicion was that the Gas Company influenced it? A. Yes; that they influenced it.

By Mr. Lawson:

Q. They didn't say that you and your associates would not be let in because you were hogging the whole thing? A. No; they, the Gas Company, were hogging the whole thing; they had a contract with the Niagara, Lockport & Ontario Power Company that the company should furnish them with power at the same rate as we had.

By Mr. Smith:

Q. Stop right there, Mr. Richmond. Did you ever know that the contract with the Gas Company should be \$26 a horse-power?

A. I can —

Q. Yes or no, please? A. I can't answer that yes or no without explaining. I am telling from recollection; my recollection is

that the contract provided for \$26, but that they had in that contract or in another contract that if the Power Company furnished power to any other company in Lockport that this Gas Company should have power at that same rate, so that would bring it down to the \$16.

Q. I am — you have no recollection of the proposition that the so-called Gas Company contract provided — and did you ever hear this before Mr. Richmond — “It is further understood and agreed, upon the execution of the contract between the Power Company —” A. Who is this contract between, may I ask, that you are reading now?

Q. Contract between the Lockport Gas & Electric Light Company and the Niagara, Lockport & Ontario Power Company; and — those are these bitter antagonists of yours at that time. A. They were not particularly bitter.

Q. Well, sweet then? A. No, not sweet.

Q. Normal then; just normal competitors? A. Yes.

Q. Did you ever know that, by your act, in disposing of all of your interests and acquiring 20,000 horse-power for your own use, that you reduced the power of the Gas Company \$10 a horse-power? A. I didn't know it.

Q. Did you find out afterwards? A. Yes, afterwards.

By Mr. Lawson:

Q. Did you have anybody advise you when you made this contract? A. There were a couple of lawyers among them.

Q. You knew enough about electricity at that time to know that this company were going to get a very substantial contract? A. No.

Q. You are a party to this contract? A. No.

Mr. Smith.—They had this 20,000 horse-power contract awaiting the signatures, and the Gas Company, not being able to wait for the possible results obtainable from Mr. Richmond and his company, made a contract at \$26, and there was a provision entered in the Gas Company contract that when the Niagara, Lockport & Ontario Power Company could induce the signatures of Mr. Rich-

mond and his associates, then *pro forma*, down went the rates from \$26 to \$16.

Mr. Lawson.— Exactly.

Mr. Smith.— And the Gas Company got the advantage of the \$16 power, and exercised their privileges in the city of Lockport, and the International Power & Transmission Company was refused because the city of Lockport refused to deal with these ten directors and their associates, and particularly refused to let them realize financially on an appropriation which they had made.

Q. Did you carry the idea when you assigned your stock in blank that Mr. Simonds and his associates should get the benefit of it? A. It was understood that they would.

Q. Did you have the information that they were to receive the contract? A. I don't know whether I did or did not; but I understood they were to get the benefit of it.

Q. It didn't interest you at all from the city of Lockport's standpoint? A. Don't think I inquired.

Q. Not interested? A. Yes, I was interested.

Q. Did you ever go back to this body of citizens of Lockport who voted that the nine members should be the charter members of this organization, and give them opportunity to come in and be substituted in place of the nine men? A. No; the organization has been dissolved long before.

Q. Has it really ever been dissolved? A. It practically went out of existence; they used to meet occasionally.

Q. It simply went into a state of suspension when it lost its charter and its ten most prominent members.

By Mr. Moss:

Q. Where are the minutes which show the resolution which appointed you nine or ten men? A. I don't know.

Q. When did you see them last? A. I never saw them at all.

Q. Who had them? A. I don't know; I suppose the secretary did.

Q. Did you have a copy? A. I presume I did.

Q. Where is it? A. I don't know; I don't think I had it.

Q. I am going to depart from the idea which you gave us this morning that you considered yourself a trustee for the people of

the city of Lockport; if you never had the minutes, of course, as a trustee, you were careful to have a copy of the resolution? A. I don't know whether I did or not.

Q. Have you ever been the executor of a will? A. Yes.

Q. Did you possess yourself of a copy of the will? A. Yes.

Q. Have you ever been a director of a business organization? A. Yes.

Q. And have been careful to have a copy of the charter and by-laws? A. No.

Q. But could put your hand on it? A. Yes, I could.

Q. Where, then, did you last see a copy of the resolutions? A. I never saw them at all.

Q. Have the minutes disappeared? A. I have not seen the constitution.

Q. You said, Mr. Richmond, that you don't know as you have ever seen the minutes? A. No.

Q. You remember at the time of the passage of this legislation of 1894 — A. You mean 1894.

Q. Yes, 1894. Did you ever attend another meeting of the Business Men's Association after that? A. I don't remember; the members merely lost interest.

Q. But they were interested at that time. Did you ever attend a meeting since that time? A. I think I did.

Q. Did you ever attend a meeting after the organization of the \$1,000 corporation? A. There were a number of meetings.

Q. Did you attend them? A. I think I did, if I was in town.

Q. Were you ever invited to a meeting of the Business Men's Association which you did not attend? A. I don't know that I did; there was another one started after that.

By Mr. Lawson:

Q. This company is the one? A. The last two or three I don't think anybody got.

By Mr. Smith:

Q. You realize that the Business Men's Association was unincorporated, was composed of prominent men; that is true, is it not? A. Yes.

By Mr. Moss:

Q. There were ten of the members? A. Ten stockholders.

Q. Ten stockholders; they were all in the habit of attending meetings of this Business Men's Association? A. They did, but afterwards did not.

Q. How many besides those ten attended the meetings? A. Oh, about thirty or forty.

By Mr. Lawson:

Q. What was the total membership? A. I don't remember.

Q. Was it over one hundred? A. Yes, more than a hundred.

Q. Was it approximately 150? A. Yes, about that.

Mr. Smith.—The best idea you can get is what Mr. Richmond said this morning about the very large committee from which they selected ten.

By Mr. Lawson:

Q. Was there a hundred on that committee? A. Oh, no, not a hundred.

Q. How many? A. About twenty.

Q. They selected one-half, then? A. There were more than ten names mentioned; I think twenty-seven names were given; the process was that each man wrote down the names, and the ten highest were chosen.

By Mr. Moss:

Q. You were speaking about the council blocking the thing. At about that time, whether before or after, had you been requested by anyone to sign off your rights as individuals? A. What do you mean by that?

Mr. Smith.—Before the application for charter to the city of Lockport.

A. Requested to sign to whom?

By Mr. Moss:

Q. To anybody; for the benefit of the city of Lockport. A. No.

Q. Was there not a meeting of you gentlemen at which the thing had been discussed, that you should sign off? A. No.

Q. Didn't you know it was desired? A. It might have been desired by some, but not by the majority of the people.

Q. Was there not a conference between you men to discuss the signing off? A. Don't know of such.

Q. Somebody discovered that there was a possible right in you, as individuals, and someone desired that you assign your right to the city of Lockport? A. I don't remember any such thing.

Q. There was a chance that if you had signed off the city of Lockport could have gotten \$3,000 a year and 20,000 horse-power and some kind of a royalty? A. I don't think it applied to the city of Lockport.

Q. Well, then, for the benefit of the city of Lockport? A. No.

Q. If you had done that thing, Lockport might now be getting all this? A. So far as I recollect, that matter was never discussed.

Q. The paper was here before us this morning, so our memories are refreshed. If you had done that, the city of Lockport might have gotten \$3,000 a year, and have 20,000 horse-power at —— A. No, I don't think so.

Q. Who was it that was willing to pay \$3,000? A. I assume it was the Niagara, Lockport & Ontario Power Company.

Q. Somebody, whom you assume to be that company, thought enough of the rights which you held as individuals to pay the city of Lockport \$3,000 a year; somebody must have thought it valuable. A. My recollection is that was simply a tentative proposition; they would do something if something else was done; it was not a square-cut proposal; it was simply a talk and nothing ever came of it, as I remember.

Q. Three thousand dollars; that would be 5 per cent on \$60,000.

Mr. Smith.—That was the minimum; the maximum possibly would be \$10,000.

By Mr. Moss:

Q. Then somebody had the idea of putting away a tidy sum of \$100,000; somebody was ready to put up some money? A. I can't say about that.

Q. It looks like it, doesn't it? A. They didn't do it.

Q. They never had a chance to do it. You didn't give them a chance; you say the common council blocked things, and in reality

you blocked things yourself. Somebody said, "This is so valuable we will put up \$100,000," and just around that time, when you say the common council was a blocker, it looks as though there was a submarine around the town of about \$100,000. Now, with a hundred thousand dollars of principal lying around, or the product of that, three or five thousand a year lying around, and you turning it down, you finally accepted a lump sum of about \$500 or possibly \$2,000 or something like that for expenses? A. That was long before.

Q. You took \$1,500 to transfer your stock? A. That was when I sold the stock.

Q. That was what did come to you? A. Yes, that did.

Q. What I want to get at is the opposition or apposition of \$1,500 on the one side and \$100,000 on the other side; you might have had a principal sum of \$100,000 for the benefit of the city of Lockport if you acted a certain way, and by acting the other way you got \$1,500 for yourself. A. I didn't get it.

Q. You did get it back? A. We didn't have the opportunity to take that other; it was only talk.

Q. You never took the trouble to find out whether you could get it or not? A. Yes, we did.

Q. You were entirely careless of \$100,000 on one side, but you grabbed \$1,500 that repaid you for \$1,500 that you had expended. Now, if that was all there was of it, Mr. Richmond, it was pretty cheap business. A. My recollection is they were never willing to go on and put up that \$3,000.

Q. Doesn't your memory come to you about you and some of your associates talking together about the suggestion that was made to you that you sign off your rights so that the city of Lockport should get this sum? A. There was never any such suggestion made to me.

Q. Did you know it was in the air? A. It was talked of, but what difference did it make?

Q. What difference did it make? It would be going to Lockport instead, that's all. A. We didn't have the opportunity, I think.

Q. You think? You think, but you don't care. A. There was lots of negotiations.

Q. Did you ask them if they were going to put up \$3,000 a year for Lockport? A. Yes, certainly I did.

Q. Did they say they would? A. They suggested something.

Q. Why didn't you stick for more than \$1,500 for your stock? A. I didn't stick for anything.

Q. Well, why didn't you stick for something? A. I was sick of it.

Q. Sick of it; \$1,500 was not very much to you? A. Yes.

Q. You have retired, have you not? A. Yes.

Q. When? A. Eight years ago.

Q. Why did you retire, Mr. Richmond? A. Why, I accumulated and saved enough to keep myself.

Q. Fifteen hundred dollars is not much — A. Fifteen hundred dollars might not amount to much for you and some others, but would go a long ways towards keeping me.

Q. Since you put such a high value on \$1,500, what did you do with it? A. Didn't do anything particular with it; I lived on it; got some stock of the International —

Q. Did you will it to the city of Lockport? A. No.

Q. Now, Mr. Richmond, as a trustee, did you think you were doing your duty to your fellow citizens of Lockport to transfer that stock in blank? A. I thought it was mine and I could do as I pleased with it.

Q. When did you get right on the idea of a trustee? A. Why, my idea —

Q. A trustee *de sontort* is charged with all of the responsibilities of trusteeship because he did something wrong; the law insists that he shall be charged with all of the burdens of the trustee because he assumed to act in the relation of trustee, so that the law will go to such a man and tell him to disgorge. A. I have never assumed to act as trustee.

Q. That is just exactly the trouble, Mr. Richmond; you were a trustee and acted as an individual.

Mr. Lawson.— You would never have been a stockholder had it not been for a designation made by a body of citizens of this city, who unquestionably, from what you have said yourself, organized, for the benefit of the city, and gave to certain of their members power to do what they could do, as a corporate body, for

the benefit of the city of Lockport; and, as the record now reads, it was never intended, as I can see it, that the nine men who formed this corporation, by an act of the Legislature, were formed for their own benefit; that they were to be formed into a corporation to bring light and power into the city of Lockport, and it was a trust, and you were in a fiduciary relationship with the city and its citizens, and not wholly with yourselves.

Mr. Smith.—Mr. Chairman, in connection with this matter, permit me to read from the common council proceedings of the city of Lockport, 1908, March 23d:

“To the Hon. Mayor and Common Council of the City of Lockport, N. Y.:

Gentlemen:

The undersigned, the International Power and Transmission Company, hereby makes application in writing to your Honorable Body for permission and consent to construct, maintain and operate the necessary poles, wires, cables and other appliances and structures, in, through and upon the streets, alleys and public places of the City of Lockport, from a point on Michigan Street on the westerly bounds of said street, where the same intersects Park Avenue, to Lock Street, where the same intersects Caledonia Street, as may be found most convenient and practicable, and which may be selected by the applicant, for the purpose of using, distributing and furnishing electricity for manufacturing purposes and factory uses to the City of Lockport and the inhabitants thereof.

Dated, Lockport, N. Y., March 23d, 1908.

INTERNATIONAL POWER & TRANSMISSION COMPANY,

by P. F. King,
President.”

This P. F. King was one of these nine men. Then follows the proposed franchise. At a later date, in the common council proceedings, and on March 30th, that was referred to the committee on streets, and that committee reported that the said proposed

franchise was inimical to the interests of the city of Lockport and recommend that it be disapproved, and further recommend that the following permission and consent be granted to said company. That committee report was signed by Mr. Willse, Mr. McCoy and Messrs. Farley, Morrill and Rignel. Then follows, the proposed franchise suggested by the common council of the city of Lockport. At a later date, and on April 6th, 1908, there appears in the common council proceedings the following:

“ To the Honorable Mayor and Common Council of the City of Lockport, N. Y.:

Gentlemen:

The application of this company for a franchise for the transmission of power to the moulding shop of the Holly Company, for the Susquehanna Smelting Company, now pending before your Honorable Body, is hereby withdrawn, and you are notified that no further proceedings may be taken thereon.

Dated, April 6th, 1908.

INTERNATIONAL POWER & TRANSMISSION COMPANY,

P. F. King,
President.”

By Mr. Moss:

Q. Did you know that people from New York were interested in this proposition? A. What proposition?

Mr. Lawson.— To purchase the stock in this company?

A. No.

Mr. Smith.— The application which was made at that time was a general franchise.

A. Was it? Then they made that before that time.

Q. With the condition that the Smelting Company was an applicant. A. Then it was probably renewed; this is not within my memory because I didn't get up this petition.

Q. There is no other instance in the city of Lockport when this occurred. After the franchise was read, Alderman McCoy

moved its adoption; Alderman Carroll moved the amendment that it be laid on the table till the next meeting in order that the people might examine and look into it.

By Mr. Moss:

Q. Didn't you know that some people in New York were interested in buying your rights? A. I didn't know.

Q. Did you ever hear the name of Mr. Brady mentioned in connection with it? A. No.

Q. Did you hear the name of General Greene? A. No.

Q. The name of Mr. Robinson? A. No.

Q. Did you realize that it was possible for your stock which you assigned in blank to pass into the hands of persons who had no interest in the city of Lockport at all? A. I suppose I would have realized it if I had given it consideration.

Q. Didn't you give it consideration? A. A man who buys it can do as he pleases with it.

Q. It is all right if he can do it honestly. Did you realize that in giving that stock transferred in blank, it might pass into the hands of people who were not interested in Lockport except to make all they could out of your neighbors? A. I supposed it was going to be for the benefit of Lockport.

Q. You supposed it was? What right had you to suppose in a matter in which you had spent so much time, had gone to Albany, and put so much effort into? What right had you to suppose? A. I had as much right as anybody.

Q. No you had not. That is your idea, but I differ from you. Of course you have got to differ here because you have been doing it for years. The expression of your face belies you. The bottom of your heart is raising up and belieing what you say with your mouth; your tone of voice is not firm; your whole expression belies you. A. No such thing.

By Mr. Smith:

Q. Are you interested in any manufacturing plant? A. Yes.

By Mr. Moss:

Q. Mr. Richmond, you won't blame your neighbors in Lockport for expressing what they seem to be a little bashful about

expressing, their belief that you got \$1,500 for assigning those rights? A. No.

Q. Did you get any rights not in money? A. None whatever.

Q. You won't blame people for expressing the opinion that you were enabled to retire from business because of this transaction? A. No; that is all I got.

Q. Will you allow me to express—and you might as well know what people are saying and thinking—would you blame some of your neighbors in the city of Lockport for what was expressed to me that if you gave away, for \$1,500, in blank, a right for which people had been talking of giving \$3,000 a year, besides other things, it was a very cheapskate business? A. They have a right.

Q. Why have you never accounted? A. I am through.

By Mr. Smith:

Q. You are still a stockholder in an operating corporation in the city of Lockport? A. Yes.

Q. Does it use electricity? A. Yes.

Q. Did you realize that the Lockport Light, Heat & Power Company would come back in 1916 and pound you over the head with this thing by increasing your power rates? A. No, I don't know as I did.

By Mr. Moss:

Q. Doesn't worry you, does it, Mr. Richmond? A. No; I am perfectly satisfied.

Q. Perfectly satisfied that the people should pay these rates; that is the chance they took when they gave you this right as trustee, isn't it? A. I have executed my trustee right.

Q. What have you done as a trustee? A. It was not expected that we would build the canal ourselves.

By Mr. Lawson:

Q. You were a promotion committee, is that all? A. Yes.

Q. Then you didn't require a charter from the Legislature? A. I didn't question what we required; that was gotten by the lawyers.

Q. This charter gave you every right that you needed? A. It was generally understood that we were to try to find somebody to do this and transfer it to them.

Q. You had acquired rights that were valuable? A. Yes.

Q. The charter itself, the acts of the stockholders, everything pointed to the fact that you were to do something more than to hold this stock in trust or in your own name and run around to find somebody? A. That is all that we were to do.

Mr. Moss:

Q. Did you do all that work for \$1,500? A. I didn't expect to get anything for it.

Q. It is a small sum, and if you had resisted the temptation of \$1,500, your neighbors would not be in this trouble now. A. I didn't regard it as temptation. I had a perfect right to do as I did. The object of forming this company was to give Lockport cheap power by means of bringing this in but we had to give it up.

Q. If you had been trying to protect the city of Lockport you would never have given out your stock certificate signed in blank.

Mr. Lawson.—More than that. This close corporation absolutely foreclosed any other body of citizens, or the city itself, as a corporation, from going out and trying to bring in this power canal.

A. That is not true; there was another act passed, giving another body power to do this thing and also naming nine trustees.

Q. What became of that? A. They never succeeded in getting anybody.

Q. Did they sell their stock? A. No.

Q. Then they were not a competitor of yours? A. Yes, they were.

By Mr. Smith:

Q. What company do you refer to? A. One of which Mr. Hodge was president.

Q. That was years before. A. This Lockport Association thought they were going to help this company that had a charter, and

then the members of the Lockport Business Men's Association thought they would get a charter of their own, and that is why this '94 charter was gotten. After a while we decided we better work back, and we joined forces with the other company and we worked back until their charter run out, and then they had nothing further to offer and we finally managed to make a deal with ours before it run out.

Mr. Smith.—A number of private citizens who got a private charter without any question of public right or citizenship. The public thought that was not a proper plan, and the public, through its Business Men's Association, and with these men as trustees, obtained another and broader and more beneficial charter, and there was opposition, but that opposition ceased to exist, and Mr. Richmond informs us the time came about and they continued in a state of brotherly love until the older brother died, and then the other one proceeded to exercise the same character of right that was granted to the other people.

Mr. Lawson.—This charter and this corporation acquired rights which proved to be valuable. Not only valuable to the corporation and to the stockholders, but to the city of Lockport as well. Now, according to the evidence, which has been produced before this Legislative Committee, the citizens of Lockport had nothing in common with this corporation. Somebody, in other words, has been betrayed. All of the powers and rights which the citizens might have had were granted to this corporation, behind which stood the citizens.

Mr. Smith.—Permit me to make a summary statement. In 1894, during the session of the Assembly, when Honorable John H. Clark represented this district, and at the time of the passage of this bill, I was in the Assembly room and heard him answer to a criticism of a New York member who said that this was another one of the private up-State schemes to get hold of a Niagara Falls charter. The member from this district stepped to the middle of the floor and said, "Gentlemen, I promise you, on my word of honor, as a man and as a public official, that this bill is intended for the benefit of the city of Lockport, and that no man whose name is mentioned as an incorporator in that bill,

ever has, does ever intend to have, does or ever will receive, a single penny for his own benefit;" and he turned and took his seat; the roll was called and the bill was passed, on the statement of an honest man. Now, the only thing on the face of the earth that is left, as a result of the passage of that legislation, apparently, is a couple of bank accounts in private hands and the privilege of having 20,000 horse-power at \$16 a horse-power in the hands of the Lockport Light, Heat & Power Company.

Mr. Moss.—The statute of limitations does not run against trust obligations. While I would be far from discussing the Penal Code, still it seems to me that there is a way of tracing this matter out and getting for the city of Lockport what belongs to it. I don't want to ask another question. We are all of us interested in politics. We are all of us opposed to corruption in politics; and the best men in the community will contribute money and devise ways and means for punishing those who are negligent in political life. The mere politicians, those who are really in politics, should be compelled to walk the straight road. We will never have clean politics in our State and in our community unless those who are interested in politics can look up to the business men for an example of integrity and honor and honesty.

HOWARD M. WITBECK, recalled:

Examination continued by Mr. Smith:

Q. Now, Mr. Witbeck, I want to get at the difference in the old and new rates; you were excused in order that you might bring some paper; you have such paper, the bill and the contract under which you have to operate at the present time? A. I have.

Q. You used power in the Thompson mill under contract? A. Yes, previous to 1914.

Q. Did your contract expire at that time? A. Yes.

Q. Not renewed on account of your intention to discontinue using electric power? A. Yes.

Q. You still had your electric connection? A. Still had an emergency plant.

Q. That continued until 1915, when these new rates went into effect? A. Yes.

Q. Had you occasion to use that electric power subsequent to the new rates? A. Yes.

Q. What was the condition as a result of using that power?
A. The cost was very near the same as under the contract.

Q. Until what time? A. November last.

Q. In November of last year, at the time these new rates went into effect, you had occasion to use it after that? A. Yes.

Q. To what extent did you use it as indicated by your bill?
A. Our water power plant gave out and we had to use electric power, and that put us under this contract.

Q. The effect of that is what, as shown in your bill? A. We haven't a bill for a full month; for three weeks and a fraction in December, \$2,100, I think, on which we received a very slight rebate owing to an error in the invoicing.

Q. How much rebate? A. A few dollars; for five or six months, \$113.

Q. Of that bill, what does your service charge represent? A. Practically \$500; I don't know whether that is just it or not; five kilowatt and energy charge.

Q. Four hundred and ninety-six dollars and fifty cents plus thirteen? A. Something over 500.

Q. Under the contract under which you are now working, if you had used power again during any month for any purpose, you would have that same peak energy charge? A. I think so.

Q. Of over \$500? A. Yes.

WILLIAM W. STORRS, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are the attorney for the Lockport Light, Heat & Power Company? A. I have acted for them somewhat in that capacity.

Q. You knew who was superintendent during the negotiations in regard to this case? A. Mr. Kaltwasser.

Q. He was superintendent from prior to the time the change in rates was suggested up to the time they were passed upon by the Commission? A. I think perhaps Mr. Wallower had more to do with that than anyone else.

Q. When did Mr. Kaltwasser cease to be manager or superintendent? A. I can't give you the date, but I think about two years ago.

Q. Mr. Kaltwasser was the man about whom these witnesses have testified; he was the same man? A. I don't know.

Q. Was there more than one Kaltwasser connected with the company here? A. I don't know of but one of that name.

Q. He was manager in 1913? A. Yes.

Q. Was he in the city yesterday? A. In the city yesterday?

Q. Had he been in the city prior to yesterday? A. I don't know.

Q. He was here yesterday? A. He was.

Q. When did he leave? A. Don't know.

Q. Do you know that he left? A. I don't know.

Q. What is your information? A. He bade me good-bye; but whether he left or not I don't know.

By Mr. Lawson:

Q. When did he bid you good-bye? A. He took lunch with me at my home and along in the afternoon he bade me good-bye.

WILLIAM W. TREVOR, being duly sworn, testified as follows:
Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport, a manufacturer, and have lived here how long, Mr. Trevor? A. I have lived here sixty-eight years.

Q. And are in the machine business on Market street? A. Yes.

Q. Have been how long? A. Have been since 1860.

Q. Is your concern a user of electricity for power? A. Only intermittently until the water is out of the canal in the winter, and we use it about one month in the Spring.

Q. Have you used it since the new rates went into effect? A. We took it out when we found they were going to charge us \$25 a month service charge.

Q. Who informed you that was to be the charge? A. Mr. Kaltwasser, I think.

Q. He informed you it was to be \$25? A. Yes.

GEORGE H. DOWNS, being duly sworn, testified as follows:
Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport, and live on East avenue, and are in business? A. Yes.

Q. What business? A. Manufacture.

Q. Where located? A. On Van Buren street.

Q. How long in that business? A. Eighteen years.

Q. Do you use electricity for power in your manufacture? A. I do.

Q. Did you use it prior to the new rates going into effect in 1915? A. Yes.

Q. So that you have a comparison between the old and new rates, as it affects your concern? A. Yes.

Q. And you are in a position to state that to the Committee? A. The bills are with the secretary.

Q. You have some knowledge of the difference in rates? A. Some, yes.

Q. Did you have any talk with Mr. Kaltwasser as to these new rates? A. No.

Q. Did you have any talk with any officer of the company when you received your bill? A. Mr. Wallower; no, I think it was Mr. Steele.

Q. Let's see, how is that name spelled?

Mr. Lawson.—I guess it's steal, s-t-e-a-l, all right.

Q. In any event, you had a conversation with Mr. Steele? A. He referred me to some other one.

Q. A telephone conversation? A. No, personal.

Q. What kind of a looking man was it? A. A tall man — but I don't remember.

Q. Give the conversation. A. It was in relation to demand charge. I wanted to know why they should make this demand charge if you had a motor larger than your demand. They said they must make the charge according to the motor. The board of trade called a meeting of the citizens and I heard the arguments, and Mr. Wallower made a statement there that a three-minute peak load was the demand in any one month and not the capacity of the motor.

Q. Did you pay the bill which was not discounted? A. I certainly did.

Q. Did you pay it at the original rate? A. Yes, as it was on the bill.

Q. Did you receive a discount? A. Why, I went in with that bill and I couldn't figure out where they could get their demand, and of course I let the bill run along and didn't use the ice machine; only used the 3 horse-power motor and used only about 2 horse-power; I didn't turn on any of the other machinery. and when I got the bill I think it was \$23 and so much demand. I said, "I have got them this time"; so the first man I struck was Steele and he referred me to another who couldn't give me any information; and he referred me to another and there must have been some mistake. I stayed quite a while and the man didn't come back, and then they said they would let me know by phone. They telephoned down that that bill was high and they would be satisfied with \$10. I said yes, and so I paid that.

Q. Was there any enquiry or test or investigation made at your place of business between the time you complained at the office and the time they phoned you they would take \$10? A. No.

Q. And you had the bill; made the complaint to the office; they told you they would notify you by phone; no test or investigation was made at your plant? A. Not that I know of.

Q. As a result of the complaint you received a rebate of \$10? A. Yes.

Q. Did I ask you whether or not, pending these changes in rates, you had any discussion with any of the officials as to what effect it would have on users such as you were? A. No.

Mr. Lawson.—Did you know they were going to increase the rates?

A. No; not until I got the bill.

Q. Didn't talk with the officials of the company? A. No.

Q. Have you single-charge motors, or motors distributed? A. It is distributed; a 20 horse-power motor, and I think two threes.

HULBERT C. WHITMORE, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Whitmore, you are a resident of the city of Lockport?

A. Yes.

Q. And in the manufacturing business, in part? A. Yes.

Q. So that you use power? A. We crush stone with power.

Q. We will call it manufacturing. You are a member of the board of education for the city of Lockport? A. I am.

Q. Have been for a number of years? A. Yes.

Q. Your concern is incorporated? A. Yes.

Q. And used power for manufacturing, both prior and subsequent to the new rates being established? A. Yes.

Q. As a result of the establishing of the new rates, you knew there was an association formed called the Power Users' League, or something of that kind? A. Yes.

Q. Did you join that? A. I didn't joint it; I don't think I ever sent an application for membership, but I attended meetings because I was interested.

Q. Because of excess charge, as you believed? A. Yes.

Q. What effect did this new rate have on your power? A. As near as I can get it through my head it was increased considerably, but I am not an electrician.

Q. There was an increase? A. Yes.

Q. Was that so much that you made complaint to the Lockport Light, Heat & Power Company? A. I had conferences with different members of the Gas Company with regard to the bills and the charges.

Q. What was the financial effect as to rebate? What rebate did you get? A. I don't think we got any rebate.

Q. Was there not a fifty dollar allowance made? A. What do you mean?

Q. In any way. A. I don't think we got any rebate.

Q. In any form or manner? A. I don't remember of getting any allowance; we took our motor out for a time; we ordered the power shut off.

Q. Was there any reduction made in the original claims made by the company so far as your bills were concerned? A. No.

Q. Did you meet members of the Lockport Light Company with reference to restoring your motor? A. We requested the use of it again.

Q. At the solicitation of the Lockport Light, Heat & Power Company or any of its officers? A. At our own solicitation, I think.

Q. Are the rates which you pay now the rates which were charged immediately after the establishing of the new rates? A. I think they were; but I don't understand such things.

Q. Who has charge of that, if you have not? A. I have done that myself.

Q. If there was any reduction or rebate or any change in the amount of money paid by you, you would know of it? A. I pay all of the bills, and so I think I would.

Q. Nothing of that kind with the Lockport Light Company, since November, 1915? A. I will say not, so far as I can understand the rates there has been nothing of the kind of a rebate.

Q. That requires a little idea of finance, and I am going to persist in my enquiry as to whether there was not some discussion whether you should pay what they demanded, or the lesser sum, and if you did not ultimately pay the lesser sum? A. We told them to take out our motor. We have no use for power in the winter. Our business is different from many businesses. I understood at the time that we would have to pay that service charge whether we used the motor or not.

Q. Who told you that? A. I think it was Mr. Duff, but am not sure; one of them told me.

Q. What service charge would you have to pay? A. I think 75 cents per horse-power per month.

Q. Up to the capacity of your motor? A. Yes; but I don't understand those rates.

Q. Do you understand, Mr. Whitmore, what the intent is in a demand of 75 cents per month per horse-power — what you pay it for? A. It's quite a complicated proposition.

By Mr. Lawson:

Q. What do they give you for it? A. Our demand for crushing stone is up and down; we might have an order for 100 yards to-day; they have got to have that charge on our demand; our demand is a 50 horse-power motor.

Q. Because they stand ready equipped to give you that power? That's the way J. P. Morgan charged the Interborough — one million dollars for having seven million dollars ready to loan to them.

By Mr. Smith:

Q. Whether or not you could continue to operate, they made that charge under the new rates? A. If you will let me explain to you; we will say that the demand charge will be \$35; if we didn't crush a yard of crushed stone we would have to pay that \$35, and if we crushed a thousand yards we would have only to pay that much.

Q. So that in the winter time, when you depend upon the weather, you discontinued the motor? A. Yes.

Q. And under the old rates the motor remained in service and crushed stone when the weather permitted? A. When we had a market for it.

Q. What would you do under this new system, not having your machine in operation, if you had some market? A. We have a storage capacity, and we crush enough to fill our bin; and if the order was not too big we could work it from our bins.

By Mr. Lawson:

Q. You accumulate a supply? A. Yes.

By Mr. Smith:

Q. When you put the power back into your motors did you sign a contract? A. Not that I recall; they took a test of some nature.

Q. Did they tell you what your demand was? A. I don't recall.

Q. Did they tell you it was 50 horse-power? A. I don't know.

Q. Have you had a bill since? A. I think so.

Q. Will you produce the bills? A. I will if I can find them.

Q. Well, you will be likely to find them, won't you? A. Yes; but I don't know whether we used any in April or not.

CHARLES A. HOAG, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes.

Q. And have been for how many years? A. Yes, about fifty

Q. And are in the cold storage business? A. Yes, sir.

Q. And have been for how long in that line of business? A. Since 1896, I think.

Q. You are a director of the Farmers & Mechanics Savings Bank? A. A trustee.

Q. Do you use electric current for power in your cold storage? A. Yes, sir.

Q. And did prior to the installation of these new rates? A. Yes, sir.

Q. So you can give personally the effect of those rates on your business? A. Yes.

Q. Will you do that for the benefit of the Committee? A. I didn't bring them, but I have one of the bills in my pocket.

Q. A new one or an old one? A. This is the bill for May.

Q. For the month of May? A. Yes.

Q. What does it show? A. Forty-four dollars and two cents.

Q. As compared with similar conditions under the old rates what would you say as to this bill? A. It is larger.

By Mr. Lawson:

Q. Do you know what you used that same month last year? A. No; it is impossible to compare one month with another, and in September, October and November we run 24 hours a day, and during June not at all; for three or four months they would not run and then for three months run 24 hours a day; so that you can't compare one month with the others.

Q. You knew the old price per kilowatt? A. Yes, sir.

Q. Your new price is less per kilowatt? A. Yes.

Q. There is a so-called demand charge in your new bill? A. Yes, sir.

Q. What is your demand charge in May? A. Forty dollars and seventy-five cents, and a discount of \$5.35.

Mr. Moss.—Who allowed it? I notice that some discounts were made because of a kick; I suppose that is in addition to the 25 cents.

By Mr. Smith:

Q. Your use is comparatively small in May, as compared with September? A. I don't think I used any.

Q. How much does it show? A. Nine hundred and two.

Q. Nine hundred and two kilowatts? A. Yes.

Q. Forty odd dollars demand charge? A. Thirty-five.

Q. Net? A. Yes.

Q. How many kilowatts in active months? A. Last October 23,000 I think; our bills are very large some months; this one is very small; I have had them as high as two or three hundred.

Q. You can realize that with the proportionate increase in your demand charge you would have quite a bill for demand charge? A. We run very light after these rates went into effect.

Q. Increasing your service or demand charge in proportion to your September use, as compared with May use, you would have a considerable demand charge? A. Yes.

Q. You have heard considerable objection to these rates? A. Yes.

Q. Have you heard any approval of them by the general public? A. Don't know as I could say the general public, but I have heard some approval of them.

Q. By whom? A. The savings bank bill is not as large.

Q. Have you examined that bill? A. No, I didn't.

Q. Do you know how much it varies? A. No.

By Mr. Moss:

Q. It is not a power bill? A. Yes, and light; an elevator.

Mr. Smith.—Very small power and considerable light.

Mr. Moss.—That is just the opposite of what was stated; it was an increase of light and reduction of power.

By Mr. Smith:

Q. What is the general impression in regard to these rates, approval or objection? A. People whom I hear talk do not approve of it.

Q. That disapproval is pretty general among the power users, is it not? A. I have only talked with a few.

Q. Yes, but among those who have said anything about it? A. They all object.

Q. Are you bothering a little bit about what is going to happen to you next fall? A. Yes.

Q. Made some expressed comment on it? A. Taken it up with the company.

Q. What results do you obtain? Any satisfaction? A. I think they are going to arrange something in regard to cold storages; a different proposition there, and they are going to make some arrangement.

Q. Going to classify some particular lines of business? A. I don't know, but I suppose they are.

Q. Assuming that they left the condition as it is now, and indefinite as it is, would you say it is unsatisfactory to the business community of the city of Lockport? A. From the manner in which they express themselves I think it is.

Q. Are you engaged in any other business except cold storage? A. I have a fruit farm.

Q. Interested in other business? A. Not actively.

Q. Officer or director in other corporations? A. Director of Niagara County National Bank and the Upson Board Company and the Niagara Textile Company.

Q. Are you a director in any public utilities corporation? A. Yes, in this company.

By Mr. Lawson:

Q. How long have you been a director? A. Quite a number of years.

Q. How long? A. Eight years.

Q. How soon after the New York interests stepped in and took control of the stock did you become a stockholder? A. Why, quite a while after; that seems a long time ago.

LOUIS G. MERRITT, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of Lockport, Mr. Merritt? A. Yes.

Q. And have been for a number of years? A. Yes, sir.

Q. And are in the manufacturing business? A. Yes.

Q. Located where? A. On Michigan street.

Q. What line of manufacture? A. Wood-working machines.

Q. You use electricity for power? A. For power and light.

Q. Were using it prior to the establishment of the new rates in November, 1915? A. Yes.

Q. And still use it? A. Yes.

Q. Are you equipped for any other method of service except electric use? A. No.

Q. You use power from Lockport Light, Heat & Power Company? A. Yes.

Q. Are you in a position to make comparison between the new and old rates, as it affects your business? A. I tabulated the rates, since the new rates went into effect. Beginning in November, 1915, and extending through May, 1916; during that time we have used 34,660 kilowatt hours and the service charge, under these new rates, has been \$228.75; the whole amount of the bill for these seven months is \$575.35; figuring at the old rates, the whole amount of the bill would have been \$487.80 and the service charge, \$140.

Q. The new and old rates made a difference in your service charge of what? A. About \$88 on the total bill and the same on the service charge; the percentage increase on the total bill is 18 per cent, and increase on service charge is 63 per cent. Under the old system the service charge was made up by getting the average peak load for the month, and multiplying by 75 cents per horse-power. Under the new rate I have not been able to find out how it is figured. The first four months our demand was 20 kilowatt; March was 26 kilowatt. I paid that bill. April was again 26 kilowatt and May was 21.6.

Q. As a business man and manufacturer in the city of Lockport, are these rates satisfactory to you? A. No.

Q. Have you heard the expression of the community in regard to them? A. Yes, sir.

Q. What is the community sentiment? A. Decidedly in opposition.

Q. Prior to the establishment of the rates, and pending the application, did you have any talk with anybody as to the effect they would have on manufacturers? A. I talked with Mr. Wallaber and asked him what effect the new rates would have and he said the new rates were intended to affect the very small users and the motor was installed and subject to use at the will of the operator.

Q. And the bills don't bear out that statement? A. They do not.

TIMOTHY J. O'SHAUGHNESSEY, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes, sir.

Q. Live on East avenue? A. Yes.

Q. And are employed by the New York Central in its local ticket office? A. Yes.

Q. And have been for some considerable time? A. Yes.

Q. And you are a user of electricity for residence purposes? A. Yes, sir.

Q. Under what is called the panel board system? A. Yes.

Q. And for house lighting as well? A. Yes.

A. You have one of those panel boards installed? A. No; I have an electric iron.

Q. You used electricity prior to the establishment of these new rates? A. Yes.

Q. What has been the effect on your bills? A. They have been increased.

Q. In what amount or percentage, as near as you can figure? A. It is a hard matter to figure that; I would have to figure out the consumption.

Q. Generally can you not give the Committee some information as to the matter? A. The bill of 1915 for the same consumption would be about \$1.35; a bill that was 90 cents in 1915 would be about \$1.35 now.

Q. Practically a 50 per cent increase on small users? A. Yes.

Q. Your meter is read once a month? A. Yes.

Q. Receive your bills once a month? A. Yes.

GEORGE T. LENNON, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes.

Q. And are in the coal business? A. Yes.

Q. And have resided here all of your life? A. Yes.

Q. And were a member of the board of trade in 1913? A. Yes.

Q. And, I believe, was a member of the board of directors?
A. Yes.

Q. And was a member of the committee of the board of trade who sat with Mr. Kaltwasser when he came to make his statement to the board as to the effect of the proposed electric light and power prices and the change therein? A. Yes.

Q. What did he say in your presence as to the effect of those rates? A. He said they would affect the small users of power; that the company actually lost money and it would not affect the rates of large users except lessen their rates.

Q. And what as to the lighting rate? A. He said the users, the larger users, of current, it would make the amounts less than under the old rates; it was intended to affect the very small users.

Q. As a matter of fact, Mr. Lennon, the effect of that statement was to suspend any activity on the part of the board of trade, as a business proposition, on looking up the matter as it might have? A. The board accepted his statement as fact.

Q. Was there any information given that led you to think that those statements were not exactly in accordance with the fact? A. No, I never heard of any.

Q. Any information that came to your knowledge as a private citizen or as a member of the board of trade that led you to be warned? A. No.

Q. You rested on the information given by Mr. Kaltwasser at that time? A. Took Mr. Kaltwasser's word, and also relied upon his promises to furnish us with full information later.

Q. You assumed that, until that further information was furnished, there would be no attempt to establish any change in rates? A. Yes, I assumed that he would keep us informed.

FRANK M. BREDELL, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes.

Q. Lived here all your life? A. Yes.

Q. You are in business in the city? A. Yes.

Q. Manufacturing business? A. Yes.

Q. And are using electric current for power purposes? A.
Yes.

Q. What is your business? A. Baking business.

Q. Your concern is located where? A. On the State road and on West avenue.

Q. Have you used electric current for power both before and since the establishment of the so-called new rates in 1915? A. Yes.

Q. So you can make comparisons? A. I have not any data to make comparisons from, except in a general way.

Q. Give us the benefit of your general information? A. Our rates have been changed very slightly in our bread shop where we have three motors; that is pending a test, which I don't think has been made yet; we had a controversy between the Gas Company and ourselves as to our load; we had one large motor, and then changed and put in two smaller motors; and pending the test they have given us the benefit of my statement as to what we were using. We have installed smaller motors for individual machines so that we have taken some of the load off of that.

Q. What is your motor capacity? A. On the bread shop I think it is 14 horse-power.

Q. You say there was a very slight increase? Give us figures? A. I am not prepared to say, except that from casual examination of the bill it is not material.

Q. We are back to Mr. Richmond again as to the materiality of small amounts of money. What has been your average consumption under the old rate? A. It varies in the season; an average of between fifteen and sixteen in the bread shop.

Q. Do you use power at any other place? A. Yes, at the cake shop on West avenue.

Q. What is its effect there? A. There is some advance.

Q. Is there any such advance as has been expressed here this afternoon? A. In the cake shop, yes.

Q. How about the bread shop? A. I don't think it has because the test has not been made yet.

Q. Pending the test they are giving you the advantage of your own statement as to what you think you should be charged? A. I think so.

FRED W. KORFF, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes, sir.

Q. Lived here all your life? A. Yes.

Q. You are an electrician? A. Yes.

Q. And have been in that business how many years? A. Twenty years and more.

Q. And have installed a large number of motors in the city? A. Yes.

Q. Will you tell us whether or not it has been the custom, prior to 1915, to put in motors greater than capacity. A. In some cases, yes.

Q. It has been the advice of the electricians in the community that that be done? A. Oh, no.

Q. It is a fact that to overload a motor is injurious? A. Yes, to a certain extent; 25 per cent excess can be reached without injury.

By Mr. Lawson:

Q. There is some rule that for the sake of resistance they don't operate to the full capacity? A. Yes, operate to full capacity.

By Mr. Smith:

Q. You have the contract for the Union School enlargement installation? A. Yes.

Q. How many motors in the Lockport Union School? A. Six.

Q. What is their total horse-power capacity? A. About 50 horse-power.

Q. That would mean, under the minimum of \$1.50 per horse-power, or \$1 per horse-power, that would be \$50 service charge for school use without any use of electricity? A. I assume so, from what their rate is.

Q. Do you use electric power? A. Yes.

Q. What effect has the new rates had on your use? A. I haven't had any method of determining because I have added a new department.

Q. How much current do you use? A. How much current do we use?

Q. Yes. A. Why, about from three to six hundred kilowatt.

Q. Did you assist in the preparation of the electric specifications in the Lockport Union School enlargement? A. No.

Q. When those were submitted and the installations took place, did you give any advice as to whether or not the motors should be greater than the demand? A. None whatever; I had nothing to do with the layout of the motors.

Q. Are there any motors in that installation in the High School enlargement greater in capacity than that required in the specifications? A. No.

Q. You said, Mr. Korff, that you had lately installed a new department in which you use a large amount of electricity, and your bills are a little bit larger or slightly larger. Do you mean in total amount? A. I mean we installed a charging station; in certain parts of the day we use current heavier than at other times; but in the month through, the increase would be slight.

Q. You get the benefit of this current without the increase in cost? A. Some increase in cost.

Q. What percentage? A. About 15 per cent.

Mr. Lawson:

Q. Does the company know that you have put in that machinery? A. Yes.

JOHN A. DUFF, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes.

Q. And have resided here how long? A. Continuously since a year ago last March.

Q. Are employed where? A. Lockport Light, Heat & Power Company.

Q. In what capacity? A. Assistant Secretary and Assistant Treasurer.

Q. You came here to accept those positions? A. Yes.

By Mr. Lawson:

Q. Where were you employed before that? A. In Harrisburg.

Q. In similar utilities corporation? A. Yes, sir.

Q. In similar position? A. No, sir.

Q. How long had you been engaged in the employ of light, heat and power companies? A. Eleven years.

By Mr. Smith:

Q. Was the concern with which you were associated controlled by the United Gas Corporation? A. Yes, sir.

Q. Mr. Duff, I asked the attorney for the company to send some person from the company here who would give me certain data from the books of the company. Among those requested, was information concerning panel board installation. Have you that data? A. Yes, sir; we installed 150 panel boards.

Q. Between what dates? A. I can't say.

Q. Will you get that fact for the record? A. Yes.

Q. Is that the total number of panel boards that you had in operation on November 15, 1915? A. Yes, sir.

Q. What technical term do you call it when you take them out?

By Mr. Lawson:

Q. You don't take them out, do you? A. We buy them back.

By Mr. Smith:

Q. Not always, do you? A. When they apply.

Q. How many have been discontinued? A. Thirty-two have been recalled; four were installed since.

Q. Thirty-two recalled; that means returned to the company and paid for? A. Yes, sir.

Q. How many have discontinued the use of current? A. I don't know as there are any.

Q. Do you know if there are any? A. I do not.

Q. Will you find out and make that statement for the record? A. Yes, sir.

Q. One of the other requests was that you indicate the gross income from January 1, 1915, during the following five months, January, February, March, April and May, and the same gross income for 1916 during the same five months? A. The gross income in 1915 was \$61,926.52, output of 5,471,376 kilowatt

hours; in 1916 the gross income was \$84,808.33, and the output was 8,185,597 kilowatt hours; giving the net price in 1916 of \$1.02 and in 1915 of \$1.16.

Q. The net price in 1916 is less? A. Yes, sir.

Q. Will you tell where that increase in output came from and what was the character of the service? A. Made up usually of increase in power consumption.

Q. Normal consumption of house users? A. Power.

Q. Where used? A. I can't locate that.

Q. Can't you locate it by your bills? A. We can locate increased consumption.

Q. Do you mean to say there has been an increased consumption of practically 3,000,000 kilowatt hours — 49 per cent in those particular five months? A. Yes.

Q. How much of an increase generally was there in the other seven months of 1915? A. I don't recall.

Q. Can you give us that data? A. Yes, sir.

Q. How many power users have you that cover that proposition? A. I don't know.

By Mr. Lawson:

Q. Does your report to the Public Service Commission show the number? A. Yes; it would show the meters used, but not necessarily the number of users.

By Mr. Smith:

Q. I will have to ask you, Mr. Duff, in view of your statement, to make for the Committee and its records a statement of the users for the five months from January 1st, 1915, to June 1st, 1915, and from January 1st, 1916, to June 1st, 1916; that is, the power users, to show where this 49 per cent increase came and how the income was derived from it. A. That will detail a lot of work.

Q. Possibly so, but we are going to be in a position to use it any time until the first of next January. Now, what was the difference in the income? A. \$22,881.81.

Q. What proportion of increase is that in percentage? A. I have not the percentage.

Q. Figure it out, please, will you?

By Mr. Lawson:

Q. That is the increase in five months? A. Yes, sir.

Q. From the report to the Public Service Commission for the year 1914 the total income from electric operation for twelve months was \$24,871.14; you are within \$2,000 of that mark now for five months only. A. For 1914?

Q. Yes, 1914; \$24,871.14.

By Mr. Smith:

Q. Did you figure that out? A. Yes; approximately 36 per cent.

Q. You get 36 per cent increase in income for a 49 per cent increase in consumption under a rate which it is conceded is an increase of rate over the former one? A. Figures don't show that; our net figures for kilowatt hours are less.

Q. Less? A. Yes.

Q. Oh, excuse me; I thought it was increase. What was the number of kilowatt hours used in 1915, in the five months? A. 5,471,376 kilowatt hours.

Q. Yes; and that brought you what? A. \$61,926.52.

Q. In 1916 you delivered out how many kilowatt hours? A. 8,185,597.

Q. Approximately three million increase in consumption? A. 2,714,221.

Q. Or 49 per cent increase? A. Yes, sir.

Q. In consumption? A. Yes, sir.

Q. Thirty-six per cent increase in income? A. Yes, sir.

Q. How do you figure that under a concededly advanced rate — your consumption of 49 per cent increase brought you in only 36 per cent increase in money? A. I said the kilowatt hours in 1916 was 10 per cent less than in 1915.

Q. Are you putting in your service charge in 1916? A. Yes; that is our gross income.

Q. You mean to say there has been so large a reduction under this new rate that 49 per cent increase in production increases 36 per cent in money? A. Yes, sir.

Q. All the more necessity for detailed statement. What do you mean by that? Explain it to us. A. I divided the kilowatt hour output into the gross income in either case.

Q. Well, then; under these various rates, if you sold an additional thousand horse-power at a gross rate of \$22 per horse-power you would get the benefit of the additional sale in your 16 candle-power lamps at 5 cents a kilowatt. That is so, is it not? A. I think so.

Q. You have admitted that the increase is by the increase of power? A. Yes.

Q. Dependent on whether or not that power was sold in considerable quantities at the lowest rate that the company advertises, that would have its effect on this calculation you have made? A. I should think so.

Q. So that the light user might still be getting the bad side of the new bargain? Just a moment and I will take it right straight through. This is where the small consumer gets it again. The residence consumer, under your calculation might, at this 5 cents per kilowatt hour rate, still be getting the bad side of the bargain and your calculation still be correct? A. He might; I am not prepared to say.

Q. He might? Well, I would not expect that you would be prepared to say; and I would not be mean enough to ask you positively. A. I couldn't say.

Q. We may have to ask you to bring some of the books here, as a result of your limiting yourself so strictly to figures. A. We have our consumers' ledgers here.

Q. You have? A. Yes.

Q. All right, I would like to see them. A. Light or power?

Q. Both. Take the light first, if you please. Does that carry back in 1915? A. No, sir; from January 1st, 1916.

Q. How long would it take you to get the corresponding ledger for 1915? A. I have them here.

Q. I wish you bring them; now I wish you would find me, from that ledger, the number of consumers who have received an advantage in the new rates. A. How do you mean?

Q. A person who has, by reason of the new rates, received a reduction in lighting. A. Here you are; any person of lighting

rate or residential rate, who uses over 30 kilowatt hours is reduced under the new rate.

Q. Who is that A. F. J. Smith.

By Mr. Lawson:

Q. How much does he use? A. Fifty-four in January; 38 in February; 38 in March; 33 in April and 33 in May.

By Mr. Smith:

Q. And will use less during the summer months naturally? A. Sometimes.

Q. Let's take F. J. Smith in 1915 and see whether he does or not. A. Seven months out of the year his bills are reduced.

Q. Are they reduced at any time during the seven months, as much as they are increased in any one of the five? A. I can tell you in a few minutes.

Q. All right, look it up. You recognize, do you, that April and November are the average months of consumption? A. I would say so.

Q. So that, running down the list, April would to your mind fairly indicate what the increase or reduction was? A. Yes, sir.

Q. Everybody over thirty has reduction? A. Yes, sir.

Q. Under 30 kilowatt hours has increase? A. Yes, sir.

Q. Take the first page of your ledger and indicate how many customers you carry on it. A. Sixteen.

Q. How many have an April increase or average increase in April? A. Four.

Q. Four out of eleven are decreased on the first page of your ledger? A. Yes, sir.

Q. One out of fourteen are decreased on the second page of your ledger? A. Yes, sir.

Q. Now, take the third page? A. Three out of eight.

Q. Now, take the fourth page? A. Two out of thirteen.

Q. And the fifth page? A. Three out of twelve.

Q. And the sixth page? A. Three out of twelve.

Q. And the seventh page? A. Three out of eight.

Q. When you have run over enough of those to take the average, percentage, we will take it and see what happens. How about page eight? A. Two out of twelve.

Q. Page nine? A. One out of fifteen.

Q. Page ten? A. None out of ten.

Q. Page eleven? A. Three out of four.

Q. Page twelve? A. One out of twelve.

Q. Those pages of your ledger indicate that, so far as your residence lighting is concerned, under the new rates, one person out of five, by reason of a greater quantity of electricity that he uses in his house, is decreased? A. Over 30 kilowatt hours per month.

Q. Can you do the same thing in the commercial lighting for me? A. Yes, sir.

Q. If you will please, on the same number of pages. A. The decrease is less per customer than the increase per customer. No, I mean the opposite. The amount involved in the decrease than the amount involved in the increase. A great many of those consumers come very close to 30 kilowatt hours.

Q. The person that you increase can less afford to stand it than the person that you decrease, because of the fact that the larger the consumer the better able he is to consume; if he consumes enough he gets the benefit of the reduction, and if he happens to be a small consumer he gets it bad. Are there any business places where you give what you call the residence rate? A. No, sir.

Q. Stores of any kind? A. No.

Q. What rate do you give a business place on Main street, for instance a shoe shining parlor, where they live in the rear of the store? A. Commercial.

By Mr. Lawson:

Q. Do you class him according to business or amount of power used? A. If he uses enough he gets under the commercial rate; unless he consumes enough to get it wholesale.

By Mr. Smith:

Q. Well, if he lives in the rear, does he get two rates? A. All depends upon the amount of current used.

Q. Go ahead, please, with your twelve-page list of commercial users? A. Page 1, none out of five; page 2, nothing; page 3, two increases out of two; page 4, one increase out of one; page 5, three out of three; page 6, two out of two; page 7, three out of three; page 8, three out of three; page 9, one out of two, and one decrease; page 10, two out of two; page 11, three out of three; page 12, two out of two.

Q. Under what rate is that Tuscarora Club? A. Wholesale?

Q. Under what theory does that club come under the wholesale rate? A. They guarantee a minimum demand of 5 kilowatt hours per month.

Q. What are their services during the the six months; how do they carry out? Do they exceed that demand at all? As a matter of fact, is it not possible for a person or institution that is using close up to the 5 kilowatt hours per month, and still retaining their position on the commercial rate, if their attention is called to that condition, to guarantee a 5 kilowatt hours demand and so receive a much cheaper rate? A. Any one who applies for that can.

Q. Are meters read on that club? A. I don't do it.

Q. Are they read? A. Yes, sir; I don't read them myself.

Q. Have they been on the wholesale rate for the past year? A. Since November.

Q. Will you give us the meter readings, the actual meter readings for that time? A. Yes.

Q. Is there any way that you can reduce or indicate on this record, for the layman's consideration, the amount of power used by one institution during those five months, as compared with its cost on a commercial basis? A. The count of his lamps.

Q. So that, under these new rates, a man commercially using electricity has a charge against him for the number of lamps he has installed, although the use may be very infrequent? A. That is the idea.

Q. How is that measured? A. By checking his lamps.

Q. What charge do you make on him for the connected load, so called? A. Ten cents per kilowatt hour for his sixty hours per month.

Q. What relation has that to his connected load? A. Why, if a man had —

Q. If a man had 10 kilowatt lamps he would be charged with 9? A. If he was not charged in 9 watts.

Q. If he had 10 kilowatt lamps he would be charged with 9? A. No, he would be charged with 54 kilowatt, a minimum of one kilowatt.

Q. Plus 90 per cent? A. No, not 90 per cent; it gives you 54 kilowatt hours as his first charge.

Q. How much in money? A. 5.40.

Q. What was the old rate? A. \$5.36, with a discount of 5 per cent before the 10th of the month.

Q. He gets a 10 per cent discount now? A. No, that is in what I have been giving you; figured at 11 and paid at 10.

Q. Would the charge be more per month? A. Be \$1.00.

Q. More than under the old rate? A. Nothing under the old rate.

Q. And \$1.00 under the new? A. Yes.

Q. Assuming that he ran his lamps so that his meter operated, and that the minimum amount of operation would consume — it would consume how much in one hour? A. Sixty watts.

Q. How much money? A. Six-tenths of a cent.

Q. How much would that increase his connected load charge? A. Not any.

Q. How much would he have to use before his connected load charge would increase? A. I don't follow you.

Q. You say if he uses no current he has a dollar charge? A. Yes, sir.

Q. If he does not use any current; if he uses more than 10 kilowatt hours he would have a charge? A. Yes.

Q. Does his connected load increase according to his use? A. No, sir.

Q. You say that he would have a charge of \$5 and something for his connected load charge? A. Oh, no; I say if he used 54 kilowatt hours a man would have 1 kilowatt connected load, he would have to pay \$5.40 for his 54, and the next 54 kilowatt hours are at 5 cents.

Q. Supposing he changed those lamps to 40 watt? A. If he had over 1 kilowatt his load would be reduced; if he had less than one, it would not be affected but it would affect his current consumed.

Q. Let us go along with that illustration. A man's installation is 10 sockets, under commercial lighting, to which are attached 10 and 60 watt lamps, has \$1 expense with no current used, and he pays no more until he uses a dollar's worth of current at your rate; he then continues to use that current at that rate until he reaches the point where he receives a 50 per cent reduction in it; up to 54 watt he pays at your 10-cent rate and beyond 54 watt he pays at a five-cent rate. A. Yes, for the second 54.

Q. What difference does it make what size lamps he uses or what sockets he has, to the company which is serving him? A. What difference?

Q. Yes. Why do you measure sockets at all, or connected load, as you call it? A. We buy power under demand business; his demand is larger according to the size of the lights he has.

By Mr. Thompson:

Q. You don't buy your power for every customer, do you? You have your one demand for every twenty-four hours? Once in twenty-four hours you peak the load? A. Yes.

Q. You get all power under your contract under the peak of your load and you sell it more than two times during the day? A. No.

Q. You do sell more than two times what you buy, don't you? That is a fact, is it not? A. No.

Q. I tell you that a company that can't sell two and a half times what they buy in a city of this size is not managed properly.

By Mr. Smith:

Q. Coming again to that proposition — is that the only answer you make to that question as to the number of sockets and where located? A. That is an engineering question, not an accounting question. I don't feel capable of answering those questions.

Q. I understand that.

(To Mr. Storrs).— Is there any engineer of the company here who is in a position to answer them, Mr. Storrs?

Mr. Storrs.— Yes, Mr. J. H. Perkins.

Q. (To Witness).— You have indicated in those pages of your register two wholesale customers who have been decreased? A. Yes, sir; nearly all wholesale customers are decreased.

Q. How many wholesale customers have you on commercial light? A. I couldn't say positively; but in the neighborhood of one hundred.

Q. And how many do you figure of ordinary commercial lighting customers? A. I don't know.

Q. About? A. Probably three hundred fifty; I don't know as to that.

Q. You have figured from June 30th, 1914, to the present time, five hundred per cent in your wholesale lighting contracts. A. We had no wholesale lighting contracts June 30th, 1915.

Q. 1914? A. 1914 either.

Q. I show you paper (shows witness paper) on which you ask for increase of rates — “wholesale lighting customers 21;” who are they that they get decreased in that way? A. We had no wholesale rate at that time.

Q. Then that couldn't be, could it? A. I don't know.

Q. If you had no customers and had no wholesale rate, the statement that there were twenty-one of them is wrong? A. On June 30th, 1914, there was no wholesale rate and no wholesale customers.

Q. What do you call your peak power users? A. Primary power users.

Q. In other words somebody uses it just as you get it? A. They use it from a thousand volt circuit.

Q. And pay at peak rate? A. Yes.

Q. How do you describe a user who has a 24-hour power, or privilege of using from 100 to 1,000 horse-power, so many hundred at so much a horse-power? A. Peak power user.

Q. He would be a peak power user? A. Yes.

Q. How many of those have you got now? A. Three.

Q. Who are they? A. United Box Board & Paper Company, Niagara Paper Mills and Covert Motor Vehicle Company.

Q. How do you describe the Federal Mills? A. They are not on the Lockport Light, Heat & Power Company's line; not a customer of the company.

Q. Is it not taking power under the International Power Company contract? A. It may be.

Q. And is that not controlled by the Lockport Light, Heat & Power Company? A. Yes.

Q. And is it not a part of your income? A. No, sir.

Q. Where do you keep that? In a separate set of books? A. Yes, sir.

Q. How many are there on that separate set? A. Three.

Q. Who are they? A. Simonds Company's plant, Lockport Glass Company and the Federal Mills.

Q. The Federal Mills contract is \$19, is it not? A. Yes.

Q. And you buy it at \$16? A. Yes.

Q. And it is transmitted over a line that cost two or three hundred dollars? A. I don't know.

Q. Don't you keep any record of that? A. I don't know anything, personally, about it.

Q. Drop the "personally" business. Do you know anything about the bookkeeping of the International Power Company? A. I make out the bills.

Q. Make out the bills? How long you been doing that? A. Since March, 1915.

Q. Make any impression on your memory? A. The bills?

Q. Yes. A. I know the bill for power from the International Power is larger than we get from the three customers.

Q. The Federal Mills; you sell to them at \$19? A. Yes.

Q. How much do they use? A. Three hundred——

Q. Nine hundred dollars a year? What do you do to incur that income from the Federal Mills contract? A. Now, I can't tell you, Mr. Smith; there is certainly a loss in current; I don't know how much or where or how.

Q. It is one of your short transmissions, is it not? A. I have nothing to do with the International Power & Transmission Company.

Q. Except to keep its books? A. Yes.

Q. The Federal Mill take 300 horse-power at Hinman station? A. No, at the mill.

Q. And the transmission is not to exceed a half mile, is it? A. I don't know.

Q. Ever been out there? A. No, sir.

Q. Ever been through that territory at all? A. Been out West avenue but not there.

Adjourned till 7.30 P. M.

Hearing resumed, pursuant to adjournment, 7.30 P. M.

Examination of MR. DUFF continued:

Q. Mr. Duff, during the examination, prior to the recess, I had occasion to ask you what the average months of consumption of power for commercial and house lighting was? A. Yes, sir.

Q. What did you tell me? A. June and November.

Q. Will you please tell me why you don't make it May and November or May and October? A. I suppose May and November have an average lighting hours.

Q. Why not April and November? A. Why, that is simply my idea.

Mr. Thompson.—What is that for?

Mr. Smith.—Just getting an average.

Mr. Thompson.—Does that affect the case?

Mr. Smith.—Yes; those who use more than 30 kilowatts per month are reduced, and those under that are increased.

Mr. Thompson.—If you take April and November you get more than in May and November?

Mr. Smith.—Why yes, it carries you back one month in the spring.

Mr. Thompson.—How are you connected with the company?

Mr. Smith.—He's the assistant secretary and treasurer.

Mr. Thompson.—In the office or outside?

Witness.—In the office.

Mr. Thompson.—Well, I'll tell you, you are a good man for that company.

By Mr. Smith:

Q. How many other customers for which you keep books for the International Power & Transmission Company besides the Federal Mills? A. Two.

Q. How many other customers has it got? A. Two.

Q. It is a corporation controlled and owned by the Lockport Light, Heat & Power Company, and has three customers? A. Yes, sir.

Q. What is the minimum of the Federal Mills? A. Three hundred.

Q. What is the Lockport Glass minimum? A. One hundred and seventy horse-power.

Q. Taken over the same line as the Federal Mill? A. I don't know whether it is on the same line or not.

Q. It is right beyond the Federal Mill? A. Naturally, I think it would be.

Q. What is the contract of the Simonds Company? A. One thousand six hundred horse-power.

Q. What is the price of the 170 horse-power at the Glass Company? A. Twenty dollars per horse-power.

Q. Twenty? At the factory? A. Yes, at the factory.

Q. What is the 1,600 price? A. Eighteen dollars.

Q. Delivered at the plant? A. Delivered at the plant.

Q. That is very close to Hinman Station? A. Yes.

Q. What is the actual average use? Does the Federal Mill use up to 300 or over? A. Average about 300.

Q. What is the Glass Factory average? A. One hundred and seventy.

Q. What's the Simond's average? A. Last month a little over 1,600.

Q. Average of 1,600? A. Yes.

Q. That is 2,070 horse-power out of 20,000 possible?

By Mr. Thompson: .

Q. Sixteen hundred horse-power? A. Yes.

Q. How much do they pay? A. About \$2,400 a month.

By Mr. Smith:

Q. Out of a maximum under the contract of the International Power & Transmission Company with the Lockport Light, Heat & Power Company you have 2,070 horse-power to these three mills?
A. Yes.

Q. The balance of that is under the contract with the Lockport Light, Heat & Power Company, is it not? A. Not that I know of.

Q. Does not the Lockport Light, Heat & Power Company now distribute the balance, or such as they require in their business?
A. A certain amount of it.

Q. How much? A. Three thousand horse-power, about.

Q. That is 5,000; and if they have the entire contract that leaves 15,000 additional horse-power average for distribution?
A. Guess you are right.

Q. Which stands at the contract cost of the power, whatever it is, under the International contract? A. I don't know about this International Power & Transmission Company.

Q. You keep their books? A. No; I make out their bills; I have none of their contracts.

Q. There is none of that power sold at less than \$16, is there, by the International Power & Transmission Company? A. It is measured in different ways.

Q. But none of it is sold less than \$16 per 24-hour horse-power?
A. I think you ought to ask the engineer that, Mr. Smith.

Mr. Smith.—If the Chairman please, this gentleman is in a very enviable position, and wants to get away. If he consents to furnish us such data as I require from his books, with the consent of Mr. Storrs, and that can be done for the purposes of this report, I think we might as well let him go now.

You are excused temporarily, Mr. Duff.

JOHN H. PERKINS, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are the manager of the Lockport Light, Heat & Power Company? A. No, sir.

Q. What position do you occupy? A. Have no position with the Lockport Light, Heat & Power Company; I am engineer with the United Gas & Electric Corporation.

Q. Excuse me. You are from the parent stem? A. Yes, sir.

Q. Are you the gentleman that prepared the reports and were a witness on the increase of rates? A. Yes.

Q. Then, is there a Mr. Perkins connected with the local plant here?

Mr. Storrs.—Yes, sir; Mr. John A. Perkins.

JOHN A. PERKINS, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. I won't make any mistake by suggesting, or inquiring, what are you? A. Manager of the Lockport Light, Heat & Power Company.

Q. How long have you occupied that position? A. Since last month.

Q. Just came to Lockport? A. Yes.

Q. Have you looked over the available properties of the company in that time? A. Got acquainted with the distribution lines.

Q. Have made some investigation of what you have to distribute? A. Yes.

Q. How much power have you under contract with the Niagara, Lockport & Ontario Power Company? A. There is —

Q. I will put it first through the direct contract that was made with the Niagara, Lockport & Ontario Power Company. A. I think that contract was — they just told me verbally of it, and I don't know what it was.

Q. Is there a new contract? A. Not that I know of.

Q. How long does the old contract run, do you know? A. No, I don't.

Q. Twenty thousand horse-power available? A. I understand so.

Q. About 3,000 of that is contracted with these three companies? A. Yes, sir.

Q. How much of the balance of that is in use by your company now in distribution? A. I can't answer that without looking it up.

Q. Have you, since you have been here, made any attempt to estimate the quantity of flat rate power that you have to buy for

the purpose of distribution as against the measured quantity that you sell or distribute? A. No, I have not.

Q. That is a subject of inquiry by the superintendent when he gets on the job? A. The first thing the superintendent does is get acquainted with distribution lines for the purpose of bettering the service. It is a very complicated distribution system. We have a number of different currents.

Q. You make those differences in currents yourselves, don't you? A. Yes.

Q. It would be possible to simplify that situation if you desired? A. No; it is beyond our control.

Q. You have no hesitancy to fix the rate so you throw out the householder's coffee-pot appliances, so why be so particular with the other fellow? A. Quite a bit of overhead work is occasioned.

Q. You speak of this connected load proposition. In the illustration that I gave Mr. Duff, in the commercial lighting contract, ten sockets each supplied with a 60-watt lamp, what difference will it make to the company to change the sockets so other lamps will be used? A. It does make some difference, possibly; a quantity is supplied under schedule for commercial rating, 54 watts during the month.

Q. What business is it of yours how it is used, if he pays commercial rate on the outside, or so much a watt? A. As I say, I am not familiar with that rate.

Q. What has been your method of selling current? A. Last sold on kilowatt hour basis; manufactured by coal.

Q. Where? A. Richmond, Indiana.

Q. How much per kilowatt for house lighting? How much per kilowatt hour? A. Ten cents.

Q. Gross or net? A. Net; and there was a minimum bill attached to that.

Q. What was the minimum bill? A. I have forgotten.

Mr. Smith.—I guess, Mr. Chairman, you will have to repeat your compliment about the good man.

Mr. Thompson.—I assumed what they wanted a manager for is this—the first thing he has to do is get acquainted; every system is different, and this one is certainly different from any

you ever saw before in your life; some systems are by steam, and some by water, and some by transmission.

Mr. Smith.—Who is the man in the city of Lockport who is familiar with the quantities, locations ——

Witness.— I do.

Mr. Smith.— Of the system. I mean the man who can tell us about the power and rates; how much you use; why you don't use and more, and ——

A. That is gotten from the meter and handed in to the secretary and treasurer, and he makes the rates.

Q. This station down here — are you using that now? A. Two generators down there; distribution point for available wires for distributing the current.

Q. Manufacturing any current there? A. Yes.

Q. How much? A. Four hundred and eighty or 490 horse-power.

Q. Just as much as you can? A. As much as we can.

Q. Although you have available over 20,000 horse-power deliverable to you at \$16 a horse-power? A. Yes.

Q. Can you produce electricity down here at less than \$16? A. I don't know; I don't know what the water costs us.

Q. The water costs you about \$20 per horse. A. I never saw that contract.

Q. We will assume that is the fact, for the next three minutes. What would that indicate for your production of electric power?

A. Market that on the peak, but off peak we could not sell it so it would not pay to generate it.

Q. Is there any method by which you could market that power so it would pay to generate it? A. Not that I know of.

By Mr. Thompson:

Q. You don't begin to use the whole of that 20,000? A. No.

Q. Five thousand horse-power used twelve hours a day out of the twenty-four hours, would produce approximately seventeen million kilowatt, about what they would use per year; they did in 1912; then in 1913 a little less, and in 1914 a great deal less.

Mr. Smith.— In 1915 a great deal less.

Mr. Thompson.—In 1912 the report shows 17,000,000 kilowatts; in 1913, 14,000,000; in 1914, 11,000,000; that could all be produced by 5,000 horse-power.

By Mr. Smith:

Q. Well, when you got here and went up on Elm street, and took a look at that peak load proposition, what did you think of it? A. What?

Q. This Elm street concern, used for taking care of the peak load? A. I am told it is one of the most efficient steam plants there is.

Q. What did you think about it as you looked it over, so far as maintaining it as a peak load electric plant is concerned? A. It ought to pay; the machines are made for it.

Q. As an economical proposition? A. I never had any experience with steam heating plants before.

Q. The first that you ever saw in connection with electric operation? A. Yes.

Q. Looks like pretty good plant? A. Yes.

Q. It remains in your mind as pretty good electric operation? A. Oh, I am not in a position to say.

Q. When was it shut down for repairs? A. June 6th, I think.

Q. Was the steam plant in operation prior to June 6th? A. Yes; approximately to the end of the heating season; I understand by inquiry it is controlled by outside temperature.

(To Mr. Storrs).—Mr. Storrs will you make Mr. Kaltwasser available to us at the future hearing a week from to-day?

Mr. Storrs.—Yes.

Mr. Thompson.—Is there not someone who knows about this? You ought to be able to tell how much they use or draw. How much do the Simonds people use?

Mr. Smith.—This is the fact. Of the 20,000 power of that contract, the Federal Mill takes 300 horse-power at \$19 and the Glass Company takes 170 minimum at \$20, and the Simonds takes 1,600 horse-power, twenty-four hour service, at \$18.

Mr. Thompson.—How much do they get?

Mr. Smith.—Run up to a thousand.

Mr. Thompson.—The Glass Company, how much is their output?

Mr. Smith.—One hundred and seventy-five; and the Simonds about 1,600.

Mr. Thompson.—What is the season?

Witness.—Can't tell you offhand.

Mr. Smith.—Does it run over 2,500? A. I don't know.

Mr. Thompson.—What else is there? There's Witbeck, and the Glass Company and the Simonds; what becomes of the rest of it?

Mr. Smith.—In control of the Gas Company to operate as it sees fit, and uses not to exceed 5,000.

Mr. Thompson.—Mr. Perkins ought to know. Let us see what he knows.

JOHN H. PERKINS, recalled:

By Mr. Thompson:

Q. Do you know how much power it takes to run this plant?

A. I think about 4,500 horse-power.

Q. I figured you could do with 5,000.

By Mr. Smith:

Q. Do you know how much horse-power the Lockport Light, Heat & Power Company have available under contracts? A. Their supply, through the contract of the Niagara, Lockport & Ontario Power Company is all used up.

Q. How much is that? A. A thousand horse-power.

By Mr. Thompson:

Q. How do they get only a thousand when they had twenty thousand? A. Contract of Lockport Light, Heat & Power Company, and the Niagara, Lockport & Ontario Power Company.

Q. Who owns the International Power & Transmission Company? A. I don't know.

By Mr. Smith:

Q. Did you ever hear that the Lockport Light, Heat & Power Company owned it? A. I understand there were negotiations on, but didn't know what happened.

Q. Did you understand they had a contract for the entire power? A. There was an agreement between the Lockport Light, Heat & Power Company and the Niagara, Lockport & Ontario Power Company and the International Power & Transmission Company.

By Mr. Thompson:

Q. Does this International Power & Transmission Company account to the Public Service Commission? A. Yes, sir.

Q. There certainly ought not to be any power famine in the city of Lockport; Witbeck, or the Federal Mill, and Glass Company and Simonds factory only draw to the outside, 3,000 horse; 5,000 to the company; and that leaves 12,000 available horsepower in this town. A. Yes, there is plenty of power.

By Mr. Smith:

Q. What is the increasing burden? A. I don't know; our prices are as reasonable as those in other localities.

Q. What is the burden necessitating increase? A. Cost of labor, and the company was selling on one basis and buying on another, and the increased cost in revenue.

Q. The water costs increase? A. Continually having peak raised by consumers who come on for short periods and paid no minimum charge but simply kilowatt hour basis at low rate; if it once establishes a peak it has to pay for it at all times; if it establishes a peak it has to pay for it; on the other hand the company had hundreds of customers who used only \$5 worth a year.

By Mr. Thompson:

Q. You buy your contract and if you exceed you pay three times the regular rate for that month? A. No, sir; you pay for it for all time.

By Mr. Smith:

Q. For how long? A. For the life of the contract.

Q. Do you mean to say you pay for the highest peak during the life of the contract? A. If we exceed that season contract the horse-power is increased the amount that exceeds the permissible amount.

By Mr. Thompson:

Q. Does for all time then, for your contract lasts for all time? A. Yes.

By Mr. Smith:

Q. How much of a burden in that way have you incurred in 1914 on account of that proposition? A. I can't give you in figures, but last fall we had our firm charge changed several times.

Q. How much? A. I can't say.

Q. How much? Fifty? A. I can't tell you.

Q. Did it go up as much as a hundred horse-power? A. No, I don't think so; I know the firm power was rebated several times last fall.

Q. Did not that fact create an impression on your mind as to the quantity of that increase? A. I have no figures to go on; if you will ask for that data we will be very glad to furnish it and tell you exactly how much.

Q. You gave some testimony in reference to those increases of yours? A. Yes, sir.

Q. Attempted to establish the proportion that the whole company should bear in each branch of service? A. Yes, sir.

Q. What proportion, by percentage, did you allow to the electric service? A. Was not done on percentage basis; the plant was operating separately, and tried each as if it was operating separately; can't assume any percentage.

Q. Resulted in a total value, did it not? A. Yes, sir.

Q. What was it? A. Would not attempt to recall the figures.

Mr. Thompson.—Evidently here, from your annual report, your power for 1913 cost you \$8,281.02; if you had used all you can take at your \$16 power plus, it would have cost you only \$7,200; it cost more than if you took it from the \$16 line.

Witness.—If you want to get to exact figures you will have to get figures; don't think you should make any deductions and assumptions.

By Mr. Thompson:

Q. Don't you make exact figures in your annual report? A. Yes.

Q. Assuming nothing made, then? A. Assuming kilowatt hour which I said I estimated.

Q. You ought to go twelve hours a day? A. I think our light factory is better than twelve hours a day.

Q. How much is your light factory? A. I don't remember.

Q. Nearer 75 per cent than 60? A. About 60.

Q. That is about fifteen hours a day? A. Varies from month to month.

By Mr. Smith:

Q. We are not dealing in exactness; will you please give me, as nearly as you can, the percentage of the apportionment of the Elm street plant to steam and electricity? A. Operating expenses or valuation?

Q. Valuation first. A. Can't tell you that without my figures; can get them in a few minutes if you want them.

Q. We will go to the question of operating expenses then. A. I supposed you were talking about that before.

Q. All right, then, we will change back to valuation. A. What do you want?

Q. I want the percentage allowed to the electric department and steam department in the valuation of the Elm street plant. A. I just told you I would not assume to remember those figures.

Q. Remember, approximately?

By Mr. Thompson:

Q. Which would you rather have, Mr. Perkins, the steam plant or the gas plant or the electric plant here? A. Don't think any of them very desirable under present conditions.

Q. If we were going to give you one of them? A. Under present conditions?

Q. Separate them. We will give you one of them, now take your property and get out. Which do you want? A. Don't think there is much choice.

Q. As much profit from one as you could from the other? A. Under the new rates, probably more money from the electric; none of them showing very good returns.

Q. Thirty thousand dollars in 1912 in the steam plant; that's pretty good I think. A. Not on a basis of valuation.

Q. The profit was \$3,000, wasn't it? A. I don't remember.

Q. Operating profit of \$30,000; electric plant only about \$15,000. A. I don't think those expenses were properly allocated or divided in the 1912 report.

Q. Neither had been, and, under those circumstances, do you think the Public Service Commission had a right to base a rate on that 1912 report? A. As returned there?

Q. Answer my question. A. They had no business to base a rate on the 1912 report to the Public Service Commission, but they didn't do that.

Q. That is another question, you know, Mr. Perkins, whether they did or didn't.

By Mr. Smith:

Q. Are you so familiar with that Public Service Commission that you know what they do? A. No.

Q. What enables you to absolutely assert, under oath, that the Public Service Commission did or did not do a certain thing? A. Because I reallocated, under their order, the business of 1912.

Q. That was one of the items upon which they should determine. A. No, this rate was submitted to them prior to the rate case.

Q. How long prior? A. In the spring of 1912.

Q. Do you mean to say the Public Service did that and directed you to do that? A. No.

Q. You did something which was before the Public Service Commission? A. They ordered the reallocation of the fixed capital of the company after deciding what that fixed capital should be.

Q. You did something? A. I made an appraisal.

Q. You made some figures? A. Yes.

By Mr. Thompson:

Q. The information of Commissioner Carr was most alluminating. A. We gave them for 1912, income \$52,000 plus, operating expenses \$12,000 plus.

Q. I am trying to find out if they looked at the reports of 1913, or 1914, or 1911, and can't find it.

By Mr. Smith:

Q. Have you any knowledge, have you any idea, that because the Public Service Commission asked you to do something that that Public Service Commission subsequently, and on a petition dated later, that they used your figures? A. They ordered the allocation of the fixed capital of the company, and after that I made such subdivision, and the report was turned into the Public Service Commission; and the Public Service Commission approved the allocation and ordered us to place it on our books.

Q. Was that the only matter upon which the Public Service Commission could act? A. I don't know.

Q. Then why did you say so?

By Mr. Lawson:

Q. You presented a report? A. Yes.

Q. Did you present any report upon which this is based? Did you submit any figures outside of 1912 mentioned in the petition? A. Our petition was based on report of 1912.

By Mr. Smith:

Q. Do you mean to say that the Public Service Commission were under any obligation to depend upon any set of figures which you submitted? A. No.

Q. They were not under obligation to take your 1912 allocation?

A. No.

Q. Then, why do you assume to say that they did take on that and not on the report of the company as filed? A. I am saying that they based the figures on three different years; but a subdivision of the expenses —

Q. Is Mr. Carr's statement wrong, then? A. No, it is not.

Q. Then it was the 1912 figures? A. Yes, sir; if you will examine the report for 1912 you will find the expenses of the electric department; all of the expenses of the steam department are not given in the steam department report for the reason they are included in the electric expenses because of the generating plant; the operating expenses had never been separated; I came on to investigate as to the rate situation; you misunderstood me because one was talking about the value of the plant and the other the operating expenses.

Mr. Smith.— I wish to offer in evidence at this point, and reading from the announcement of the commencement of business of the Lockport Light, Heat & Power Company, a booklet issued by the Lockport Company at the commencement of business, on or about January 1, 1908, and quoting a decision of the Public Service Commission of the State of New York, permitting the combination of the companies, "The prices fixed by the Commission are to be the maximum prices to be charged for gas or electricity in such municipality, until the Commission shall, upon complaint or upon investigation conducted by it on its own initiative, again fix a different maximum." That is a quotation from the opinion of the Commission justifying the establishment of the new company in the city of Lockport. I wish also to offer in evidence the section on page 307 of the report of this company for the year ending December 31, 1912, being the year upon which the figures were based which established the apparent right of this company to have a new rate and with added prices, for the reason that it was not earning a sufficient rate of income on the amount actually invested by it in its business. I want to show the amount that the city of Lockport, as a municipal corporation, was earning out of the local investment that it had in the Lockport Light, Heat & Power Company and its properties. "Esti-

mated values for purposes of taxation. Item. Present value on basis of cost of reproduction. Property in streets and public places \$386,157.44. Property outside streets and public places (real estate, etc.), \$578,406.32. Tangible personal property, material, supplies, etc., \$18,986.27. Present value, allowing depreciation: Property in street and public places, \$379,338.65; property outside streets and public places, \$568,178.13; assessment on the \$379,338 of property in streets and public places, \$225,000. The City of Lockport's share in its present value of \$568,178 was assessed at the magnificent sum of \$141,200." (Report introduced, marked Exhibit 4.) So that there was another corporation existing in the city of Lockport that, by reason of excessively low rates, was earning far from a fair return on the amount it had invested in the Lockport Light, Heat & Power Company. Twenty per cent, or not to exceed 25 per cent, on the assessment of the property for one year.

I also desire to read into the record the following from the pamphlet issued by the Lockport Light, Heat & Power Company at the commencement of its business: "It is for this reason that the Public Service Commission is vested with full powers — to regulate the power propositions and to have the power of fixing the maximum price of gas and electricity to be charged by a gas and electric corporation; as well as to order amendments in the transmission or supply of such electricity, or in the methods employed by such corporation, as will, in its judgment, improve the service." I think it is eminently proper to call the attention of the Legislature and the Public Service Commission of this district to the fact that this company, with thousands of horse-power available under its existing contracts, is operating water plants or steam plants in the city of Lockport, for the purpose of producing electric power, and that it has two such plants in the city of Lockport, both of which, under its demand, must be maintained, and upon which a fair return must be made by the consumer of the electric current.

JOSEPH WHALEN, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. Yes, sir.

Q. And have been for how long? A. Sixty-two years.

Q. You are engaged in business on Market street in the city of Lockport? A. Yes, sir.

Q. What line of business? A. Sash, door and blind factory.

Q. You are a tradesman yourself? A. Yes, sir.

Q. How many employees have you? A. I have only myself on machinery, and a man besides. Q. You have operated in a small way for how many years at that point? A. Have been at the business about thirty-one years.

Q. At this particular point, and alone, for how many years? A. About twenty.

Q. How long have you used electricity for power? A. Seventeen years.

Q. Still have it installed? A. Yes, sir.

Q. Do you remember the time when the new rates came into effect? A. Yes, sir.

Q. You have some figures, have you, as to its expense to you? A. Yes, sir.

Q. Will you give us the advance in rates to you? A. In 1910 it was \$81.30 a year; 1911 was \$52.22; 1912 was \$131.95; 1913 was \$165; 1914 was \$162.15; and 1915 was \$156.70.

Q. And at the new and present rate, what do you assume the expense will be? A. My expense — last month's bill was \$17.80.

Q. I have that bill in my hand and it shows a \$13.75 service charge. A. Yes, that is my service charge.

Q. On what capacity motor? A. Ten horse-power motor.

Q. Only one? A. Only one.

Q. In that same month you used 530 kilowatt hour or \$5.30 worth of electricity? A. Yes, sir.

Q. And got a discount of \$1.25? A. Yes.

Q. So that your service charge was over two and a half times the actual power you consumed? A. Yes, sir.

By Mr. Lawson:

Q. You say your bills are averaging about \$17. Do you operate the same every month all the year round? A. I run about on an average. The highest power bill that I had up to the new rates was \$3.

Q. Have you averaged at the present rate they are charging you what it will cost you per annum? A. About \$204.

Mr. Smith.—He figures about \$200 a year to assist himself on machinery.

Mr. Lawson.—As compared with his former charge of ——

Mr. Smith.—About \$60.

By Mr. Smith:

Q. Do you use less or more now? A. I use less.

By Mr. Moss:

Q. How much less? A. Only one man now, and used to be two.

By Mr. Lawson:

Q. Your increase will be 100 per cent and you use a great deal less horse-power? A. Yes; but the service charge is a great deal more than that.

JOSEPH W. TURNER, recalled:

Examination continued by Mr. Smith:

Q. Mr. Turner, since you have been examined, I understand you have refreshed your recollection in relation to conversation with Mr. Kaltwasser in regard to power use. What was it that brought that back to you? A. I was acting as vice-president of the board of commerce and at one of the meetings a question was brought up about the statement Mr. Kaltwasser had made with reference to reduction, and I made the statement before the board that, in that I had overheard Mr. Kaltwasser make the statement, and I refreshed Mr. Dickenson's recollection and he referred to the minutes and verified the statement I had made; it was called to my attention that Mr. Kaltwasser had made that statement in our presence.

Q. Did you subsequently have any talk with Mr. Wallower about these peak load meters? A. Yes; Mr. Wallower was questioned by several members of the board of commerce at one of our meetings with reference to the effect of the rates, and in that meeting he made the statement that all consumers of electricity

would be supplied in the very near future with peak meters, and that their demand charge would be figured from that peak meter, and, wishing to be informed as to it, I called up the office and talked with Mr. Wallower on the subject, and he stated to me that peak meters had been ordered but the factory had been rushed and in the very near future they would be supplied to all of the customers, and that the charge would be made from any three minutes of peak that might occur, and that would be the demand charge for the next three months or longer; that in no case could it be reduced; and in the case the next month, or month after, the peak would run still higher, the demand would be increased and would follow for six months. He said there was no question but that the company had suffered by these peaks. At the public meeting when he was asked what time of day the high peak occurred he said some time late in the afternoon in the fall of the year when the lights are on. Someone suggested that the auxiliary plant could relieve it at that time; later he said the peaks could occur at any time. He claimed these peak meters were ordered and would be installed at an early date.

Q. What did he say would happen to the customer? A. He said a great many of the customers' rates would be increased over what they were paying now, under the new rate, and that is probably so.

By Mr. Thompson:

Q. Put on maximum demand? A. Yes.

Q. Practically putting a maximum demand meter on everybody in town?

Mr. Smith.—Yes, except for the fact in those few instances where they charge by the capacity of the motor.

Mr. Thompson.—It is a maximum demand just the same.

Witness.—My service charge was figured on a basis of about nine horse-power. First on a basis of sixteen, and later reduced to fourteen, and since then one of the assistants came down there and apparently had a stop watch and watched to see what we were using at the time he was there. He said to me that he calls

at frequent intervals at various plants to ascertain what their consumption is.

Mr. Thompson.—Charles Bishop, Lockport, one share; Charles A. Hoag, Lockport, one share; William W. Storrs, Lockport, one share; Henry Morgan, New York, one share; S. J. Dill, New York, one share; George Bullock, one share; S. J. Dodge, one share; Lockport Light, Heat & Power Company, Lockport, New York, 149,300 shares. Is that right, Mr. Storrs?

Mr. Storrs.—I don't know anything about it, Mr. Thompson, but will get you that information.

Mr. Smith.—That is what I was going to tell the Chairman—that in 1906, the Economy Light, Fuel & Power Company and the Lockport Gas & Electric Light Company, desired to join forces, and in order to accomplish what they set out to accomplish, they organized the Lockport Light, Heat & Power Company, and transferred to it the properties of both of those companies, the Lockport Gas & Electric Light Company still retaining its own existence and buying back the whole stock of the newly created company, except five or six or seven shares. That is the condition that exists on the record. They simply absorbed, without changing their property at all; they absorbed the Economy Company.

JOHN A. PERKINS, recalled:

Examination continued by Mr. Thompson:

Q. Do you know whether the Lockport Gas & Electric Light Company report? A. I don't know.

Q. The question is where the stockholdership really is; if the Lockport Gas is owned by some other, and that by some other, and so on, we will have but to chase it down.

Q. Mr. Smith.—Do you know, Mr. Storrs?

Mr. Storrs.—No.

By Mr. Smith:

Q. Your total valuation of the steam plant is what? A. The proportion assigned to the Elm street plant is \$140,610.

Q. How much to the electric plant? A. It is all taken in in the electric department, and the steam furnished the steam department taking that into account at the price furnished.

Q. So that the physical condition to-day, as we can observe it, is to go up on Elm street and see a portion of your electric operation up there? A. Both electric and steam.

Q. Charged up to electric? A. The valuation is in the electric department.

Q. Valuation in your electric department is what you present to the Public Service Commission for the purpose of showing how much you had there invested to justify an increase of rates? A. This value was assigned on their order to allocate the fixed capital.

Q. There appeared, as a part of the electric investigation the entire plant on Elm street? A. Yes, sir; the operating expense was included in any value there was in the plant; there was nothing there that would not be necessary in the operation of the electric plant.

Q. So you assigned it to the electric department? A. Yes, sir.

Q. And that is where it stands in your annual report now? A. The books have been readjusted on that basis.

Q. Was that allocation ever made a matter of public hearing or discussion? A. I don't think so, except as it came up afterwards in relation to the rate cases.

Q. So that public service corporation, without public hearing, takes the liberty of establishing its own fixed capital in any department and then makes application based on the proposition that it has so much capital invested? A. I don't know.

Q. It happened here, did it not? A. The matter came up in the rate hearing.

Q. It happened just that way, did it not? That this company took a manufacturing concern which had been manufacturing steam for years and which had a small electric operation, and which condition was recognized in the reports of the company during a period of years, and then on a readjustment, on the request of the Commission, it was permitted to turn that entire manufacturing industry into a so-called electrical department of

the Lockport, Light, Heat & Power Company? A. I don't know, because it was never separated before; it is on the books as a whole.

Q. All credited to the electrical department? A. Not as a whole; there was no separation prior to 1913.

Q. There didn't become any separation then, as concerns that steam plant? A. No.

Q. When the departments were separated, the service of the Elm street plant was not changed in any way? A. All of the Elm street plant is in the electric department, furnishing steam as a by-product with the proportionate part of the operating expenses charged to the electric department.

Q. Who gave the order to make an electric generator out of that steam plant? A. I don't know.

Q. Who told you to do it? A. It was done before I was there.

By Mr. Thompson:

Q. It was an electric plant, with steam as a by-product, then? Twenty-eight thousand dollars for coal, which would have bought 17,000 horse-power of electricity. A. That is all combined; that is the trouble.

By Mr. Smith:

Q. Where did you put the distribution system of the old steam plant?

Mr. Thompson.—\$28,267.31 for coal; steam operating expenses besides that.

Mr. Smith.—I would like to have it appear that the amount of coal charged to operation would be more horse-power than the capacity of the whole plant.

Mr. Thompson.—It would be 17,000 horse-power.

By Mr. Smith:

Q. How much money, in your report, shows as invested in the steam operations in the city of Lockport? A. The total.

Q. Total invested in steam operation? A. The proportion of the fixed capital as fixed by the Public Service Commission, assigned to steam department is \$185,797.11.

Q. Let's call it \$200,000. In 1914 how much was the profit out of the steam?

Mr. Thompson.— Not as much as in 1912.

Witness.— The expenses are not separated there; the distribution expenses are there, but not the others.

Mr. Smith.— \$47,265.12 gross they got, and paid about \$30,000 in expenses of all kinds.

Mr. Thompson.— In 1912 they got \$46,000 plus, revenue, and paid out \$13,000, plus, of expenses; profit of \$32,000.

Witness.— I don't think the generation expenses are in there.

Mr. Smith.— Direct, general and miscellaneous; deducts uncollectible bills; allows you \$17,000, or 8½ per cent.

Witness.— Does it speak of generation expenses?

Mr. Smith.— No; direct expenses.

Mr. Thompson.— Rate case ought to be tried. I don't think this rate case was tried as it ought to be, and I think the people of the city of Lockport are entitled to a trial of this rate case, and where they can go into the situation. This record don't show proper trial. They have not really tried it at all. The people who pay these rates are entitled to be heard and should have opportunity to come in and contest; and in my judgment, they have not had it, and I think the Public Service Commission's duty is to give it to them. Our enquiry is a question of inefficiency or misconduct of a Public Service Commission or the necessity of a law to establish reasonable conditions in companies subject to their supervision. Now, here is your situation in Lockport. You have a company — don't know whether it is related to another company that has contract for excess power or not, but they don't get into that. The question of how much property they have is not the question by which to get at the rate. A public service corporation has no right to own a lot of property that is not necessary, and then earn on that property. They have only a right to earn on property that is necessary to conduct the business. And I don't believe that has been gone into in this case. I don't believe it was

tried on the proper separation of the three classes of business which this company carries on. The Public Service Commission bases their opinion on an agreement between the city of Lockport and the company and the Public Service Commission's engineer. They hired a man named McClellan and he assumes to agree for the city of Lockport, and he takes up the rate matter; and he tried to get the corporation counsel to agree likewise, which he did not do. I think we might like to examine Mr. McClellan.

Witness.— He lives in New York.

Mr. Thompson.— I am sorry to have appeared to be at all capricious or severe about these things, but our patience has been sorely tried; you have to keep all of the time trying to get your questions answered; I want to compliment you just as I did the other fellow; it is your business to do the best you can for your company, and you surely are doing it.

Mr. Smith.— The comment of the Chairman as to the method of the trial of this case in the city of Lockport brought to my mind a voluntary statement made by one of the officials of the city of Lockport — and I feel it would be highly improper not to permit him to express that opinion on the stand.

Mr. Thompson.— Now, I don't want anybody to think here that this company has not been up against something. They have been. The local manager is right; he has got his troubles. Mr. Perkins is right. They could earn just as much money if they charged a little more for the wholesale and a little less for the retail — if they so arranged their rates. I don't think it is a case where everybody ought to get mad at the company, but you really ought to try to continue this out and let the Public Service Commission make a rate that is much fairer.

ALBERT C. DOYLE, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You reside in the city of Lockport? A. Yes, sir.

Q. And are a member of the common council? A. Yes, sir.

Q. And have been for how long? A. Upwards of three years.

Q. You were present at the Niagara county court house on the occasion of the hearing in this rate case? A. Yes, sir.

Q. When Commissioner Carr was sitting? A. Yes.

Q. You went there as a public officer, interested in the hearing? A. Yes, sir.

Q. In the course of the conversation to-day you made some comment which you thought ought to be presented to the Committee?

A. Yes, sir, I ——

Q. Not wishing to assume the responsibility of suppressing it, I ask you to state it to the Committee, please. A. I was at the court house, and at the time that Mr. Perkins, the engineer of the Lockport Light, Heat & Power Company, was making his report of the allocation of the different properties, he made in his report the statement that this plant was designed for an electrical plant, and, as he stated here to-night, the steam was a by-product of the electrical plant; he also said that fifty per cent of the operating and maintenance charge of that steam plant was a charge against the operating department. I said to the council that the Lockport Light, Heat & Power Company could not maintain that plant and deliver the maximum demand of steam to its customers during the winter months with fifty per cent of the operating and maintenance charge. Mr. Perkins talked to Mr. McClellan and then they took an adjournment till after three in the afternoon, and after they came back it was entirely a different line of testimony.

Q. Did you ask the corporation counsel as to whether he did or did not know? A. I asked him and he said he was not familiar with it. I told him he should know it was designed for underground steam heating. I lived in that vicinity for upwards of twelve years; my house backed up against the Steam Company for five or six years. The American District Steam Company had its machine shop there, and had to have engines to operate its separate system, and that was a charge against the electrical department.

Q. What time in the morning was that? A. About a quarter after eleven.

Q. While the session was going on? A. Yes; and they adjourned immediately afterwards.

Q. As a result of the conversation they had? A. Mr. McClellan and Mr. Storrs; Mr. Storrs and Mr. Perkins and Mr. McClellan entered into a conversation and then adjournment was taken shortly after by Commissioner Carr.

Q. And lasted till three o'clock? A. Yes.

Q. At which time the line of enquiry changed? A. Yes.

Mr. Smith.—I would ask that the proceeding be regularly held, and adjourned to the city of New York; and it is just possible that there may be a continued hearing here.

Mr. Thompson.—I understand there is to be a hearing on the application for rehearing in this case at Albany, on next Tuesday.

Our only authority will be, of course, to criticise the Public Service Commission. There ought to be a law of some kind for the guidance of these Public Service Commissions for the valuations of properties and how to get at it. The question of valuation and question of capitalization apply pretty directly as to question of rates. It would be better for stockholders and better for everybody else to have some fixed rule. People generally don't criticise very much if they are not discriminated against; any man is willing to pay a dollar if his neighbor pays a dollar. People are perfectly willing to have these companies managed by private capital; and they are perfectly willing that private corporations should live and should make good profit. It is the discrimination that bothers and makes trouble. So far as the Public Service Commission is concerned, I don't care to make any criticism until the case is finally disposed of, and if they grant a rehearing it would not be finally disposed of for some time; so we will withhold any criticism. One other thing occurs to me; Mr. Richmond was subjected to considerable of an examination, and I think it would be rather a pity for Mr. Richmond to for one moment think that he was singled out as the worst one interested in the Niagara, Lockport & Ontario Power Company.

Mr. Smith.—Indeed, almost the contrary.

Mr. Thompson.—I make the statement because I have not seen him personally, and, as he is a fairly modest man, and fairly

retiring in disposition, he might feel he had been subjected to severe criticism. We knew he had as little to say as anyone mixed up with it. If he has committed an error, it has been largely one of being brought into it by someone else. I remember Judge Hickey was one of the stockholders but he continued all of the time so he didn't get anything. But I don't want Mr. Richmond to think he was singled out for undue criticism because I think what he said about his \$1,500 is about all he got. I believe him. That condition is one that perhaps the corporation counsel ought to look into. But it may even be too late now.

Another thing. Mr. John E. Pound was mentioned too. I want it borne in mind that John E. Pound was dead before this matter was brought up at all. Mr. John E. Pound and Mr. C. J. Ferrin opposed personal consideration in that matter while Mr. Pound was alive, and after Mr. Pound died Mr. Perrin resigned and appointed Judge Hickey in his place. The judge went in and continued.

I don't know as anything else occurs to me. We didn't mean to hurt anybody's feelings. We felt the public ought to be represented, and public officers ought to continue for the public as if we were retained by private clients. We feel that we represent the public and that we should give just as hearty service to the public as we would to private persons. So far as senators are concerned, the public does not give very large retainers, but we took it and we have got to work it out. We don't want to affect anybody personally or anybody's reputation. If anyone had any unpleasant experience, it was because the interests of the public demanded it.

If no one has anything to bring before the Committee, we will suspend for to-night, to continue at 507 Municipal Building, New York City, on Monday morning next, at 11 o'clock.

LOCKPORT LIGHT, HEAT & POWER COMPANY.

Comparative Revenues — Based on year ending June 30th,
1914.

CLASSIFICATION.	Number of customers.	Number of K. W. hours.	Present revenue.	Proposed revenue.	Increase.	Proposed rate.
Municipal	1	1,387,246	28,736	28,736	.....	Present
Peak power	5	8,312,842	48,131	48,131	.....	Present
Residences	844	193,908	13,908	16,439	2,531	75c+5c+2c
Commercial lighting.	238	410,000	25,074	32,010	6,936	10-5-2 (60+60)
Wholesale lighting...	21	134,178	7,346	4,656 (decrease) (2,690)	.....	McC. No. 9
Commercial power...	111	181,182	4,277	8,114 (increase) 3,837	.....	7-4-1 (40+40)
Wholesale power....	78	2,223,500	26,720	57,773	31,053	McC. No. 9
Total.....	1,348	12,842,856	154,192	195,859	41,667	.....

Committee's Exhibit No. 3. Lockport, June 17, 1916. M. G. Williams, Stenographer.

REPORT FOR YEAR ENDING DECEMBER 31, 1912.

Estimated Values for Purposes of Taxation.

ITEM.	Property in streets and public places.	Property outside streets and public places.	Tangible personal property, materials, supplies, etc.
Present value on basis of cost of re- production (new)	\$386,157 44	\$578,406 32	\$18,986 27
Present value, allowing depreciation..	378,338 65	568,178 13	.....
Present value .....	.....	.....	.....
Assessment	225,000 00	141,200 00	None.

Committee's Exhibit No. 4. Lockport, June 17, 1916. M. G. Williams, Stenographer.

JUNE 19, 1916

Meeting was called to order at 11 o'clock, Senator Thompson presiding.

WILLIAM A. PRENDERGAST, having been previously sworn, was called as a witness and testified as follows:

By Mr. Moss:

Q. How long have you been comptroller? A. I have been comptroller since the 1st of January, 1910.

Q. Were you interested in the subject of subways, rapid transit, and so on before that? A. A citizen's interest.

Q. Just a citizen's interest. Not a member of any organization or committee that investigated or looked into the matter of rapid transit, were you? A. I was a member of the South Brooklyn board of trade and the Brooklyn Savings and Loan, and I believe those organizations both took an interest in the subject.

Q. Did you take any special interest at that time? A. No.

Q. So that your interest in the subway was of —— A. Well, I might—I want to qualify that. While I was registrar of Kings county, I remember making an address, I think, once, on the Fourth avenue subway.

Q. Yes. And your active interest in subway matters began with the campaign of 1909, didn't it? A. Yes.

Q. And did you make the subway question a point in your campaign speeches? A. I think it was made a point in my speeches, and in the speeches of all the candidates.

Q. And you took it on the platform of the Republican party, didn't you? A. I did.

Now, Mr. Chairman, since we have reached the stage I would like to say that I have prepared a statement covering my association with this, from the time I took office, or from the election of 1909. I'd like to make the statement and then submit to such examination as your counsel or yourself desires to make.

Senator Thompson.—You are entitled to make the statement.

A. You will then have a chance not only to ask me such questions as you want to ask in general or such questions as you might base upon the contents of this statement.

Senator Thompson.—Did you want to read this?

A. I do. I prefer to read it.

Witness reads statement which is entitled, "Statement of William A. Prendergast, Comptroller, for the Legislative Investigating Committee in regard to the negotiations leading up to the signing of the Rapid Transit Contracts Nos. 3 and 4, by the Board of Estimate and Apportionment. New York, June 19, 1916," which is as follows:

"It is my desire to submit to your committee a complete statement of my relation to the subway question from the time of my first election as Comptroller of the City of New York in 1909, to and including the period of the approval by the Board of Estimate and Apportionment of the contracts for the dual subway system.

It is not possible for one to form an intelligent and impartial opinion of the subway contracts unless there is presented a complete history of the treatment of this matter from the election of 1909. Such a history will clearly prove that the final arrangements which were made with the transit companies were really an evolution of a number of different propositions, suggestions and plans developed from time to time. To express it in another way, the city officials who went into office on January 1, 1910, did not have before them, as far as the transit question is concerned, one and only one concrete proposition. Although it might have been the belief of some that there was such a proposition, the actual handling of the subject developed the fact that the minds of all the city officials did not meet by any means and that further there was a very substantial division in the public mind regarding the most effective way of solving the transit problem.

Seven of the eight members of the Board of Estimate and Apportionment, excluding Mayor Gaynor, who went into office on January 1, 1910, were elected upon a platform which stated:

'All future subways should be owned by the city; they should be built with the city's funds, construction by private capital not being permitted except when it is positively demonstrated that the city is financially unable to keep up with the demands for transit extension, and then only on terms that will preserve strict and effective municipal control.'

In a report submitted to the Board of Estimate and Apportionment on January 5, 1911, signed by Mayor Mitchel and me, we stated that this (referring to the platform) absolutely committed the candidates to the construction of a new and physically independent system of subways — physically independent because strict and effective municipal control cannot be exercised over an extension or section which for its very existence as an operating entity depends upon a main stem over which the city has not and cannot obtain control for fifty years.

This was the interpretation we placed upon the platform to which I have referred, but it must be understood that in the contract made with the Interborough Rapid Transit Company, and now known as Contract No. 3, provision has been made for a recapture of the system or such a part of the system as will enable the city, if it ever so desires, to possess itself of a completely independent operable system. Consequently the issue of monopoly to which Mayor Mitchel and I referred in our report of January 5, 1911, does not exist. This fact taken in connection with the further fact that it was completely demonstrated that the city could not with its own means ever create such a system as is now in course of construction, through the co-operation of the two transit companies, effectively proves that the pledges of our political platform have been absolutely respected. Further, in the estimates of increased debt-incurring power made in the report of Mr. Mitchel and myself on January 5, 1911, and in the report of the Transit Committee consisting of Messrs. McAneny, Miller and Cromwell, of June, 1911, which were based on figures furnished by the Department of Taxes and Assessments, it is found that these figures were not borne out by the facts and were \$72,000,000 out of the way in the first mentioned report, and \$98,000,000 in the other.

At the examination of Mr. J. P. Morgan on Thursday, June 15th, 1916, it is reported that Mr. Moss asked Mr. Morgan whether he did not know that General Tracy in 1909 had decided that the city had a borrowing capacity of \$100,000,000. The borrowing capacity of the city, as determined by General Tracy, was not the question with which the city authorities were called upon to deal in the year 1910. For instance, on December 31,

1909, the margin of debt incurring power was \$58,764,207.36, and on that date there were outstanding authorizations for general municipal purposes, including subways, of \$72,418,091.02. In addition to this there were outstanding authorizations of \$33,000,000 for refunding deficiencies in taxes, or a total of outstanding authorizations of \$105,418,091.02 — an excess of almost \$50,000,000 of planned expenditure over the amount available with which to pay for it.

The problem was so to adjust our finances as to bring our outstanding authorizations within the margin of our debt-incurring power. We succeeded in doing this, and, as the year 1910 went on, additional debt-incurring power became available; but a study of the figures concerning our debt-contracting power, which have been furnished to your committee, will prove that it would not have been possible to have entered upon anything like the extensive scheme of rapid transit development which is now nearing completion if all the funds had to be furnished by the city itself, and at the same time take care of the very great number of other much needed municipal improvements. The subway question was regarded by the administration taking office in 1910 as the most important question before it. At the first meeting of the Board that year a resolution was offered, and later adopted, providing for the appointment of a transit committee, to confer with the Public Service Commission. This Committee consisted of the Mayor, the Comptroller and the President of the Board of Aldermen.

In February, 1910, Chairman Willcox of the Public Service Commission entertained the members of the board of estimate and apportionment and the Public Service Commission at dinner at his home. This was the first general conference or meeting upon the transit question. The conference was of a very general character, Mr. Willcox outlining the situation as it had developed up to that time. The subject to which most discussion was given on that occasion was the idea of building a good part of a new system by assessment upon the property to be benefited. The principal point discussed was the possibility of disposing of the bonds it would be necessary to issue to finance this work. No action of any kind was taken at this meeting.

Following the meeting at the home of Mr. Willcox, Mayor Gaynor, Mr. Mitchel and I attended several meetings at the office of the Public Service Commission. These meetings were concerned almost entirely with the consideration of the construction of the tri-borough or municipal route. At one of these meetings representatives of the Brooklyn Rapid Transit Company appeared, Mr. Winter being president at that time, and discussed certain improvements that the Brooklyn road desired to make. No conclusions of any character were arrived at. I recall that the propositions made by the company at that time did not appear to be acceptable to any of the public officials, but the plans they presented had no relation whatever to subway construction.

During the months of February and March, Mr. Willcox told me of conferences he was holding with Mr. Shonts, the purpose of these conferences being to secure a satisfactory proposition from the Interborough Rapid Transit Company. I understood that these conferences were what we call informal and that no definite plans had been settled upon. I informed Mr. Mitchel of these conferences, but they were not discussed with the other members of the board of estimate and apportionment.

I also knew at about this time that officials of the Interborough Rapid Transit Company were discussing subway matters with Mayor Gaynor and that they had called on him at his office and also at his home in St. James, Long Island.

Sometime in the month of March, 1910, Mr. Willcox told me that negotiations with the Interborough Rapid Transit Company had been entirely suspended, as Mr. Shonts had informed him that the company would not be prepared to carry out the plans he had been discussing with Chairman Willcox. I did not know that even an informal unsigned proposition ——

Senator Thompson.—Informal? What do you mean by informal?

A. They had not settled upon any definite plans and the meetings were not formal meetings of the Public Service Commission.

Senator Thompson.—All these meetings were informal?

A. Practically, yes, up to the time when definite action was taken.

Senator Thompson.—Are you ——

A. Except it was a meeting of the committee appointed by the board of estimate.

(Resumes reading of statement.)

“An informal unsigned proposition had been submitted by the Interborough Rapid Transit Company.

The conferences between the transit committee of the board of estimate and apportionment and the Public Service Commission were continued, and it was the understanding at these conferences that the city would undertake to complete the tri-borough route.

During the month of June, 1910, Mayor Gaynor suggested to me that we should give consideration to the question of additions to the existing Interborough system, as well as to the construction of the tri-borough route; and about the same time he handed me a copy of a map indicating extensions into Manhattan by the Brooklyn Rapid Transit Company through the use of the bridges. It was my understanding from him that there had been conferences with the Brooklyn Rapid Transit Company on his behalf carried on by Mr. Kingsley Martin, commissioner of bridges, and Chief Engineer Ingersoll of that department. During the month of July, Mr. Martin and Mr. Ingersoll called on me at Mayor Gaynor's request and we discussed the plan of subway extension by the Interborough Company as suggested in its letter to Mayor Gaynor early in that month, as well as the proposed plans for the Brooklyn Company, outlined on the map given to me by Mayor Gaynor, to which I have already referred. It was on that occasion that I said to Mr. Martin, as he has already testified, I believe, that he talked like an Interborough lawyer, and I made the remark to him because I felt he had argued the Interborough's case with great skill. I knew from what Mayor Gaynor had told me and also from what Mr. Martin had explained that he and Mr. Ingersoll had been conferring with the two companies at Mayor Gaynor's suggestion with a view to determining upon many facts relating to the rapid transit question. The mayor was perfectly justified in having his representatives undertake work of this kind, and only did what any other mayor would have done in preferring to depend upon his personal representatives to get information, which he regarded as of a very important character.

Early in July, 1910, Mr. Shonts, of the Interborough Rapid Transit Company, submitted a proposition directly to the mayor for the extension of the Interborough's routes, the construction of these extensions to be financed with city money. I conferred with Chairman Willcox regarding this proposition and believed them, and so state now, that it was irregular for a proposition of this kind to be addressed to the mayor instead of to the Public Service Commission. Mr. Willcox immediately wrote a pretty strong letter criticising Mr. Shonts' communication, and the offer was practically withdrawn. Mayor Gaynor always contended that the proposition was submitted by Mr. Shonts with a view to making it the subject of public discussion.

At about this time Mayor Gaynor wrote an article upon the subway question which appeared in the Outlook during the month of July. I knew of the preparation of this article, as Mayor Gaynor had told me about it some weeks before it was published. It was in this article the mayor made the remark that he thought the subway question should have a chance to 'sweat itself out.'

It was during the month of June of that year after we had held our conferences with the Public Service Commission regarding the tri-borough route, that the proposed contracts for construction were submitted on behalf of our transit committee to a special committee of engineers consisting of the chief engineer of the board of estimate and apportionment, the consulting engineer of the borough of Manhattan, the chief engineer of the office of the commissioners of accounts and the principal assistant engineer of the department of finance. This committee of engineers was instructed to examine the proposed plans and specifications. From the suggestions that had been made to us informally by different engineers, it was our opinion that changes could be made in the contracts which would decrease the proposed expenditure some ten millions of dollars, and the conclusions of the committee of engineers confirmed this opinion.

It was not until the fall of 1910 that the tri-borough route contracts were ready for advertising. The Public Service Commission advertised contracts for the construction, equipment and maintenance of the tri-borough route by private capital, and also contracts for the construction of sections of the route with city

money. There were no bids for the construction, equipment and operation of the route by private capital, but a number of bids were submitted for the construction of different sections with city money. The fact that capitalists seemed to take no interest in the construction, operation and maintenance of the route was disappointing and was so regarded by the city officials. On November 4, 1910, Mr. Shonts wrote to me saying that he would like to have a talk with me on the subway question. I made an appointment with him and he called a few days later. We had a general discussion of the matter, but no definite plans were mentioned by Mr. Shonts.

On the 18th of November, 1910, the Hudson and Manhattan Railroad Company, by its president, William G. McAdoo, submitted to the Public Service Commission an offer to equip and operate, if constructed, that portion of the tri-borough system running between 138th street in the Bronx and Wall street in Manhattan. This offer proposed a change in the tri-borough system by omitting the Canal street cross-town loop, and the Broadway leg of the Broadway-Lafayette avenue route, substituting therefor an under river tunnel running through Wall street in Manhattan and Montague street in Brooklyn, connecting with the proposed Lafayette avenue subway in that borough, this extension to be continued out to a point contemplated in the plans of the tri-borough system. Mr. McAdoo's offer did not cover the proposed extension of the tri-borough system in the Bronx, nor did it embrace any plan for the operation of the Fourth avenue subway or its extension of the Center street loop.

On December 3d the Hudson & Manhattan Railroad Company, through its president, notified the Public Service Commission that its offer would remain open until December 15, 1910, only, and that if no answer were rendered thereon by that time it would be withdrawn by the company. The Public Service Commission having failed to act upon the Hudson & Manhattan Railroad Company's proposition by December 15th, that company thereupon withdrew its offer. It will be observed that Mr. McAdoo's offer referred only to the equipment and operation of a route to be constructed by the city, and further, the routes named by him constituted valuable lines running through rich territory.

The offer did not contemplate operating any extensions or lines which might be regarded as being of questionable producing character at that time.

Just subsequent to the submission of Mr. McAdoo's offer Mr. Willcox told me he was again negotiating with the Interborough Rapid Transit Company, and that he believed that a definite offer would be made by them. This offer was submitted under date of December 5, 1910. The company proposed to build and equip certain lines and to pay toward the cost of the work the sum of seventy-five millions of dollars, this including construction and equipment, the city to pay toward the cost of construction the sum of fifty-three millions of dollars. This offer was submitted by the Public Service Commission to the board of estimate and apportionment, and by that board referred to the transit committee. Mr. Mitchel and I conferred with Mayor Gaynor, and it was understood that Mr. Mitchel would prepare the draft of a report, which he did. Mr. Mitchel and I conferred regarding this draft, and when it was in a completed form we submitted the main points to Mayor Gaynor. The mayor did not agree with the position we had taken, and I recall very distinctly that he said at the time that he wished we would prepare a report upon which we could all agree. Mr. Mitchel and I concluded that this was impossible, in view of the mayor's attitude, and we therefore submitted our report as a majority report. This report advised the rejection of the Interborough offer and asked the board of estimate and apportionment to adopt the following resolutions:

First.—That the available credit of the city be devoted to the construction of an independent, municipally owned and controlled subway system, whose integrity as an operating unit can be forever maintained.

Second.—That the present or future available credit of the city shall not be lent in whole or in part to any existing corporation or individual for the extension of any existing system of subways until such independent system shall be completed and in operation.

These resolutions were voted upon by the board of estimate and apportionment on January 5, 1911, and were defeated by a vote of ten to six, six members voting against them and two in

favor, those voting in favor being the president of the board of aldermen and myself; those opposing being the mayor and the presidents of the Boroughs of Manhattan, Brooklyn, Bronx, Queens and Richmond.

At the meeting of the board of estimate and apportionment on January 19th Mayor Gaynor submitted a minority report in which he favored the acceptance of the Interborough offer. Shortly thereafter Mr. Mitchel and I conducted a public discussion on the Interborough proposition, speaking at meetings in different parts of the city. We found a good many people who appeared to approve the ideas we had expressed, but the general reception of our report by the press and the business public indicated that, while the Interborough offer in its exact terms might not be entirely satisfactory, still there was a very strong sentiment in favor of the extension of the existing system. That a large majority of the members of the board of estimate and apportionment was not prepared to enter at that time upon the construction of a system built entirely by city money is proved by the vote of the board to which I have already called attention.

On January 19th, a resolution offered by President McAneny was adopted, authorizing the appointment by the mayor of a conference committee, with power to confer with the Public Service Commission 'upon the pending proposition of the Interborough Rapid Transit Company or upon any proposed modification thereof or upon any alternative plan the Public Service Commission may present or that may be presented to it.' The committee appointed consisted of the presidents of the Borough of Manhattan, Bronx and Richmond.

At this point may I call attention to a fallacy existing in the minds of some people and which I judge from published reports has been imbibed by this committee and its counsel. The fallacy to which I refer is that the fact that certain members of the board of estimate and apportionment had at times expressed vigorous opposition to the methods and plans of the Interborough Rapid Transit Company precluded them from ever voting to approve any proposition made by that company. It is needless for me to say that such a position assumed by a public official would mean a virtual betrayal of his trust, because he would

thus prevent himself from ever voting for any offer from the Interborough Company, no matter how fair or valuable to the city such an offer might be. I now wish to show that it was never a fixed intention to forever ostracize the Interborough Rapid Transit Company, by calling attention to the resolution approved by the board of estimate and apportionment on January 19th, in which its conference committee was authorized 'to confer with the Public Service Commission upon pending proposition of the Interborough Rapid Transit Company (that of December 5, 1910), or upon any proposed modification thereof, or upon any plan the Public Service Commission may present or that may be presented to it.' This resolution was adopted by the unanimous vote of the board of estimate and apportionment, Mr. Mitchel and I both voting for it. Surely, if it was my idea never to vote for a proposition from the Interborough Company, I would not have voted to authorize a committee of the board to enter into negotiations bearing upon a pending offer of the company or modifications of it. That it was apparently (and I say surely in my own case) not the intention of Mr. Mitchel and myself to disqualify the Interborough from ever making another contract with the city is shown by correspondence between us and Mr. McAneny under date of February 4, 1911, addressed to Mr. McAneny as chairman of the conference committee. With this letter we submitted a communication we had sent to Mr. Willcox as chairman of the Public Service Commission, in which we called attention to what appeared to be an over estimate of the cost of constructing the system as outlined in the Interborough's offer of December 5, 1910; in concluding our letter to Mr. McAneny, we said:

'In order that there may be no question regarding the record, we also again take the liberty of impressing upon you the fact that in any negotiations which your committee may enter upon with the Interborough, we regard the two questions of the construction of a route which can be physically severed and independently operated at the end of a ten-year period, and also a general distribution of profits over the entire system consisting of the present subway and such extensions as might be built, as being conditions precedent to any arrangement made with the Interborough.'

I call your attention to the fact that both of these conditions are complied with in the dual subway contract.

Negotiations between the transit committee of the board of estimate and apportionment and the Public Service Commission and the Interborough were undertaken immediately. During the month of March, 1911, the Brooklyn Rapid Transit Company presented to the city a proposition for the building of additional lines and the merging of some of its present system. The plan of the Brooklyn Rapid Transit Company was then taken up by the conferees, and this was the beginning of the development of the dual subway system.

On June 13, 1911, the transit committee submitted to the board of estimate and apportionment a joint report from itself and the Public Service Commission. This report dealt thoroughly with all phases of the subway problem. It laid out the routes for the Interborough and the Brooklyn companies, and also stated the terms upon which those routes should be operated. This report was acted upon by the board on June 21, 1911. The report was adopted by an unanimous vote, it being decided that the new system should be offered to the two companies, again proving conclusively that none of the members of the board of estimate and apportionment was unwilling to make a new contract with the Interborough Company, provided that contract contained satisfactory terms. The report provided that in the event of the Interborough declining to accept the city's proposition and the Brooklyn Rapid Transit Company's agreeing to do so, the lines declined by the Interborough should be offered to the Brooklyn Company and vice versa; that if both companies declined to take over the systems as laid out, the city should proceed at once with the construction of the so-called tri-borough route, and that the Public Service Commission should proceed to advertise for bids for the equipment and operation, or for the partial construction, as well as the equipment and operation of the tri-borough route, with the idea of securing an independent operator for such route. Further, that the franchises sought by the Interborough and the Manhattan Railway Company for the third tracking and extension of their elevated lines in Manhattan and the Bronx be granted, permitting that work to proceed immediately.

At a meeting of the board of estimate and apportionment, on June 29, 1911, there was submitted, with some modifications, the acceptance of the Brooklyn Rapid Transit Company of the proposition that had been made to it for the construction and operation of certain routes. These modifications were in great part accepted by the transit committee. The Interborough declined to accept the city's proposition and withdrew its offer of 1910 and subsequent offers.

The matter rested in this shape for a few days. At this time Mr. Edward M. Grout appeared as counsel for the Interborough Company. I was attending the funeral of a prominent Brooklyn citizen with Mayor Gaynor, and on our way back to Manhattan Mayor Gaynor invited Mr. Grout to accompany us. Mr. Grout and I discussed the transit situation. I told him that I thought it was most desirable that the dual system be established, as I believed it was the best suggestion that had ever been offered to the city for transit extension; and I also expressed the belief that after spending months in negotiating, as the Interborough had with Mr. McAneny's committee and the Public Service Commission, it ought to be possible for the city and the company to arrive at satisfactory terms. Mr. Grout suggested that he and his principals would be very glad to discuss the matter with me. I told him that I preferred not to do so, as I thought that if negotiations were to be reopened it should be with the transit committee of which Mr. McAneny was chairman, with whom I advised him to consult. There were some conferences held by the board of estimate upon the subject, and in these I took part. By Monday, July 17th, the negotiations had proceeded to the stage when it was necessary for the board of estimate to consider the question informally. A meeting was held on that date at the mayor's office. The mayor attended for only a short time and appeared to take an unfriendly view of the suggestions made for the settlement of the differences between the city and the company. I recall that on the occasion of my talk with Mr. Grout, Mayor Gaynor took little or no part in the conversation and expressed no opinions.

It was proposed that the city should allow the Interborough Company 9 per cent, this being apportioned as 5 per cent interest and 1 per cent sinking fund upon the capital contributed by the

company to proposed and existing subways, and 3 per cent as compensation to the company for the pooling of the receipts of the existing subways with those of the new subways, levelling the leases of the existing subway and exchange of the legs, and for services in connection with the operation of the property. The discussion was principally upon the advisability or propriety of this rate. Some members of the board were inclined to accept it. After the meeting was over, late in the afternoon, Mr. Mitchel, Mr. McAneny and I attended a conference at the Metropolitan Club. There were present, I think, Mr. Seth Low, Mr. Davison of J. P. Morgan & Co., Mr. Shonts and Mr. Grout. There may have been others, but I do not recall. The company and its friends stood out stoutly for the allowance of 9 per cent. To this Mr. Mitchel would not agree. After a prolonged discussion, Mr. McAneny and I agreed to stand for the 9 per cent. Mr. Mitchel refused to do so. The meeting then adjourned, and I went to Mr. Mitchel's house for dinner, where I afterward met Commissioner Maltbie of the Public Service Commission, who expressed his disapproval of the allowance of 9 per cent. After this conversation it seemed to be assumed that the offer made by the Interborough Company would receive the approval of the board of estimate, and consequently the company put its offer into definite shape and submitted it under date of July 19, 1911. The meeting of the board to taken action upon the question was scheduled for Thursday, July 20th.

I want to say that upon all phases of the subway matter, there was the widest publicity, and no one could claim unless he did not read the newspapers, that he was not kept well informed regarding the main points of the entire subway discussion.

On Tuesday of that week, Mr. Bradford Merrill of the New York American called to see me. He said he came for the purpose of learning what, if anything, had been done in the subway matter as he was anxious to send word to Mr. Hearst who was in Europe. I told him exactly what the situation was, and that in all probability the offer made by the Interborough would be accepted. I remember that Mr. Clarence J. Shearn, now a judge of the Supreme Court, called upon me the same day and urged me very strongly not to vote for the approval of the contract on

the basis proposed, as he did not believe it to be in the public interests. A number of people came to see me about the matter, some very much in favor of the plan and others opposed to it.

On Wednesday, the 19th, I had luncheon with Mr. McAneny and Mr. Willcox and expressed to them at that time my doubt as to the advisability of going ahead on the basis to which I agreed.

I now wish to describe an incident in connection with this matter, and to which I make reference only because it has been mentioned by the counsel of this Committee. While at dinner at my home on the evening of July 19th, Mr. John H. Weier, at that time a reporter on the New York American, and now commissioner of parks in the Borough of Queens, telephoned to me. He said that he had been asked by the editor-in-chief of his paper to see if I would not arrange to meet Mr. Merrill that evening regarding the subway question, which was to be decided the following morning. I told him that I would be very glad to do so. He said that he did not know exactly where it was proposed such a meeting should take place, and if on my way over I would stop at the City Hall, he would meet me and know at that time exactly where a conference could be arranged. Mr. Weier met me and said that although Mr. Merrill had intended to ask me to meet him uptown, he had not received word in time and had left for the American office. Mr. Weier therefore wanted to know if I would go to the American office and meet Mr. Merrill. I said I had not the slightest objection, as I had frequently gone to newspaper offices to discuss public matters. I went to the office of the New York American about 8.30 p. m., and there met Mr. Merrill and Mr. Clarence J. Shearn. We had a long and earnest talk regarding the advisability of letting the Interborough Company have a contract with the city upon the basis that had been outlined, the one point to which objection was made being the 9 per cent allowance. While our conference was going on, Mr. Weier came to the door and handed me a copy of a statement that had just been issued by Mayor Gaynor, in which the mayor denounced the last proposition of the Interborough Company, and stated that he would not support it. It was after I had read this statement of Mayor Gaynor that I prepared a statement which

appeared in the New York American the following morning, in which I also said that I would vote against the Interborough offer. Later that evening I telephoned to Mr. McAneny and told him that I had made up my mind not to support the Interborough proposition.

I met Mr. McAneny at the City Hall before our meeting Thursday morning, July 20th, and we then agreed that when the Interborough offer was defeated, Mr. McAneny would offer a resolution providing that the lines which had been assigned to the Interborough Company and which could be operable by the Brooklyn Rapid Transit Company, be awarded to the latter, and that the Public Service Commission be instructed to draft a form of contract accordingly. This resolution was put to a vote and received eleven votes; those in favor being the comptroller, president of the board of aldermen, and the presidents of the Boroughs of Manhattan, Brooklyn and Richmond; those voting in the negative were the mayor and the presidents of the Boroughs of Bronx and Queens. A resolution when being voted on for the first time requires twelve votes for its passage. The board adjourned until the following morning, Friday, July 21st, and on that date the resolution was unanimously adopted, Mayor Gaynor being absent and Mr. Mitchel sitting in his place.

On the same day, Friday, at about 7 p. m., I was asked to go to the Public Service Commission's office to certify contracts for sections of the Lexington avenue route. I certified four contracts in favor of the Bradley Contracting Company, amounting to some fourteen millions of dollars. It was intimated to me that a legal action might be started to prevent the carrying out of the arrangement that had been decided on that day by the board of estimate and apportionment, and that consequently it would be well to have the contracts certified.

After the action of July 21, 1911, there were no important developments regarding the dual subway system until toward the latter part of October. At that time President Rea of the Pennsylvania Railroad Company addressed a letter to Mr. Mitchel, in which he called attention to what he believed to be the very unsatisfactory and unsettled condition of the transit problem in the

city of New York. For the purposes of the record I quote that letter in full:

‘ October 27, 1911.

Hon. John Purroy Mitchel, President, Board of Aldermen,
City Hall, New York City:

My Dear Mr. Mitchel:

Upon the suggestion of our counsel, Hon. Morgan J. O'Brien, that you desired to know the subway needs of our company in the city of New York, I take pleasure in furnishing you the information.

With your intimate knowledge of the situation, it is scarcely necessary for me to refer to the fact that in locating our railroad in and through the city of New York it was done at considerable additional expense in such a manner as not to interfere with any present or future lines of rapid transit; and that the rights we obtained from the city were based upon very heavy franchise payments. Nor need I tell you that in locating our station at Seventh avenue instead of fronting on Broadway, as we might readily have done, we considered not only the future but present traffic density and the relatively small highway space to accommodate it at Broadway and Herald square, and we relied fully upon our understanding with the Rapid Transit Commission as to a Seventh or an Eighth avenue subway.

Our location on Seventh avenue and the purchase of our property, including the bed of Thirty-second street from the city, was, therefore, effected with the view of assisting in the rapid transit problems of Greater New York, as well as of providing for that large body of traffic from all parts of the country to and from that city. Further, we built four tunnels between the station and Long Island for the accommodation especially of Greater New York and Long Island outside of the prohibited five-mile limits as against two tunnels leading to New Jersey, and by far the greater part of the expenditure of our company and the Long Island Railroad Company was made within the limits of that city.

We have no desire to refer to the past subway history, but rather to address ourselves to what we believe is uppermost in your mind — that in some way reasonable subway accommodations shall be included in your present subway program to provide for the citizens and travelers to and from the Pennsylvania station and for the West Side of the city and upper East Side, which the citizens, taxpayers and transportation companies have in fairness a right to expect and in that way past neglect shall be remedied.

The wants of the Pennsylvania Railroad and of the West Side of the city, and of the upper East Side can best be met and indeed can only properly be met, by extensions of the present city subway which is operated by the Interborough Company, making what is known as "H" system, or by an independent rout, as recommended by the chamber of commerce and known as the "scissors" route, which is practically the same as the "H" route but is kept independent, and, of course, if not operated as part of the present city subway, would require an additional fare.

You may well ask how this can be brought about in view of what has occurred in the subway situation. It can only be accomplished by broad-minded men with the ability to forget a great deal, so that, by their zeal for its welfare, the city may finally and permanently benefit.

Do you not think that the only way it can be accomplished is to revive the proposition of July last, under which both of the rapid transit companies were factors in the situation in co-operation with the city? This co-operative plan, you will remember, made the Brooklyn Rapid Transit Company the dominant subway operator in the Brooklyn section, but also awarded it the Broadway-Fifty-ninth street line as a distributing and receiving through route in Manhattan; and the Interborough Rapid Transit Company, the operator of the present city subway, was continued the dominant subway operator in the Manhattan and Bronx sections, with an entrance for its new lines into Brooklyn to properly serve the community, and by the inclusion in its system of the Lexington avenue and Seventh avenue links, made the city the

real dominating factor by providing two straight-away Manhattan subways from Brooklyn to the Bronx and extending into Queens for a single fare. It also, as you know, required the Interborough Company to provide \$75,000,000 of new capital, which, in view of the city's requirements, I regard as a very important factor; leveling of the leases and the control of the Steinway tunnel to Queens at very low cost compared with a new tunnel; equal participation in profits and other very strong concessions, no doubt obtained after laborious good work on behalf of the board of estimate and apportionment and the Public Service Commission. I question whether the city can ever obtain a better bargain.

Generally speaking, I am not yet particularly attracted to the extensive use of the city's money and the co-operation plan, but if for the benefit of the citizens, socially and commercially, both companies are allowed to enter each other's territory, and especially as the Brooklyn Rapid Transit Company is to obtain the best line and the most profitable traffic, then the co-operative system submitted by the B. R. T. Co. and the Interborough Company was apparently the only course that could be pursued, and its advantages to the city, won after such great labor, should not be lost.

We have been appealed to by associations and large bodies of the citizens in the Bronx, the West Side of the city and in Queens, to protect our interests and theirs in the Rapid Transit situation, but relying upon the city officials' promises that we would not finally be neglected, we preferred to wait and aid in an active constructive policy. Now, if you feel that the guarantee co-operative plan of July 20, 1911, will be again considered by the Public Service Commission and board of estimate and apportionment, this large body of influential citizens stands ready to request that the same be reconsidered, and shall be resubmitted by the Interborough Company for that purpose. A willingness to do so will be greatly appreciated by the citizens and taxpayers at large, and if for any reason the Interborough Rapid Transit Company declines to resubmit it and thereby blocks the plans of the city in getting its hold upon the subway situation, all

criticism of the exclusive grant to the Brooklyn Rapid Transit Company will be replaced by unanimous approval. Then we will co-operate in endeavoring to work out a Brooklyn, Bronx and Queens subway system for the lines already agreed upon to meet that situation.

Looking at it from the interests of the city, as well as our company, the last is only a final resort. We do not plead the case of either Rapid Transit Company, and have tried to state our views to cover what we need ourselves and yet agree upon a plan broad enough to fully protect the city's interests. The need for subways promptly built, the protection of the city's credit, and extension of its subway ownership on the best terms, the welfare of the wage-earner for the greatest travel for a five cent fare, and a substantial profit to the city at the earliest date, all make me feel that the guarantee proposition of last summer ought to be revived for both companies.

I am not willing to take any steps to do it unless I am given some assurance that you and your associates in the board of estimate and apportionment and also the Public Service Commission, are willing to entertain it if requested to do so. I feel sure we will submit sufficient justification for its further consideration, and that the results will be very satisfactory to all those who have participated.

Appreciating your interest in the matter, and trusting that I may hear from you very shortly, I am

Yours very truly,

(Signed) SAMUEL REA,

First Vice-President.'

I was in Atlantic City with Mr. Mitchel when he received the letter and we discussed it very briefly. A few days afterward, to be specific, November 1, 1911, while in the mayor's office, Mayor Gaynor spoke to me about the transit question and asked me if I did not think the whole matter had been left in an unsatisfactory state. I told him I did not believe the action we had taken was satisfactory to the people of the city generally and that if a proper arrangement could have been made the

Interborough Rapid Transit Company should have been brought into the new system. In expressing this opinion to Mayor Gaynor I was depending upon what I believed to be the best public sentiment.

The mayor spoke to me particularly of the plight of the Pennsylvania Railroad Company with its investment of over \$100,000,000 in the city of New York. I told him that I considered that the Pennsylvania Railroad Company deserved a good deal of consideration from the city authorities and that the adjustment we had made of the transit question left that road in a very unhappy condition. After further discussion of the matter the mayor asked me if I would be willing to have the entire matter reopened. I told him I was and that if by any possible means a satisfactory agreement could be arrived at with the Interborough people I had become convinced that it would be more satisfactory to the people of the city as a whole than if we were to leave the matter in the shape that it was.

My relations with the mayor for more than a year had been very unpleasant but he said to me that morning that he hoped, for the sake of the city, that we could work together upon this question and work harmoniously. I assured him that I was quite willing to work harmoniously on this as well as on every other question.

I do not know to what extent my interview with the mayor may have had any bearing upon the next development in the case, but I know it was upon the following Monday, being the day before Election Day, that I received from President Rea, of the Pennsylvania Railroad Company, an invitation to take dinner with him at the Century Club on the following Thursday night and meet a number of men who were interested in the transit question. The names of those men were given in the letter. I noticed that Mr. Mitchel was not among those invited and I immediately communicated with Mr. County, Mr. Rea's assistant, and told him I considered the failure to invite Mr. Mitchel a serious omission, and that unless Mr. Mitchel were invited to attend the conference I would not feel disposed to go to it. I had already raised this point with Mr. McAneny and he told me that an invitation to Mr. Mitchel was absolutely neces-

sary if he and I were to go to the conference. Mr. County explained that Mr. Rea had not received a reply from Mr. Mitchel to his letter of October and assumed that Mr. Mitchel was not interested in the matter to the extent of conferring with him. This was all straightened out; however, and Mr. Mitchel was promptly invited and was one of those at the conference. To the best of my recollection there were present Mayor Gaynor, Mr. Willcox, Mr. McAneny, Mr. Mitchel, Mr. Rea, Mr. Low, Mr. Hepburn, Mr. Davidson, Judge O'Brien and myself.

The conference dealt generally with the Interborough situation. I did not remain for the entire evening, but learned a little later from Mr. McAneny and Mr. Mitchel that nothing definite had been either suggested or arrived at, except that it was understood that all concerned would try to come to some satisfactory conclusion. It became known during the few days following this conference that such a meeting had been held and that there was a possibility of the Interborough Company being again brought into the transit arrangements.

About this time Mr. McAneny delivered an address on transit questions before the Brooklyn Institute of Arts and Sciences. I was present and was called upon to speak. It was that very evening that a Brooklyn paper had published a rather sensational story to the effect that the Brooklyn Rapid Transit Company was to be deprived of some of the rights it expected to get under the arrangement of July 21, 1911. I made a statement to that meeting in which I said that negotiations had been reopened with the Interborough Company and that if a new arrangement were made with that company it would mean that the original proposition of the dual subway system would be carried out. President Williams of the Brooklyn Rapid Transit Company was present on that occasion.

The next important development was a conference on Thursday, the 16th of November, at the Metropolitan Club. Mr. Mitchel, Mr. McAneny and the representatives of the company and the railroad were present. The principal point discussed was the percentage allowance which we could make to the Interborough to cover the cost of carrying its money on old and new investments, allowing to it a reasonable percentage of its profits

upon the old system. After much discussion Mr. Mitchel, Mr. McAneny and I decided that we would agree upon 8½ per cent. The bankers and the representatives of the railroad and Mr. Rea said that would not be satisfactory, and the conference adjourned without any agreement. Later that evening Mr. Mitchel sent word to those who had been at the conference whom he could reach at the time, stating that he withdrew his agreement to 8½ per cent, and I know that the following morning he communicated with all the others upon the subject.

Mr. Rea, Mr. McAneny and I had a talk about the matter the next day, and at my suggestion Mr. Duncan MacInnes, the chief accountant of the finance department, was delegated to confer with Mr. McAneny and also with Mr. Mitchel, or his representatives, and to examine the figures submitted by the Interborough Company, with a view to determining what was the maximum of percentage allowance that the city could reasonably and in justice to itself make to the company.

Mr. MacInnes undertook this work and prepared a number of reports and tables setting forth conclusions. I believe that all of these reports that were asked for by the former counsel to this Committee, Mr. Bainbridge Colby, were submitted to your Committee, and any that have not been submitted, the Committee is welcome to.

I went to New Orleans on the 17th of November and did not return for about ten days. I learned, however, while there that nothing definite had been done regarding the subway question. General conferences upon this subject were resumed the night before Thanksgiving Day at a dinner at the home of Mr. McAneny. I remember that there were present Mr. Willcox, Mr. Mitchel, Mr. Davison, Mr. Rea, Judge O'Brien, Mr. Shonts, and I believe some others. Mayor Gaynor was not present. The mayor had previously explained to me that unless he was absolutely required at the meetings he preferred not to attend them as the other men upon the Board had made themselves familiar with the figures and other details. He said to me, however, that he would like to feel that he was represented at the conferences and that thereafter when any meetings were held he desired that I should represent him. I told him that I would be very glad

to do this and would report to him regularly. He said not to bother making any reports unless something of great importance transpired and that as far as we was concerned he wanted me to understand that whatever I agreed to he would agree to.

Nearly a year and a half afterward, after the subway contracts had been signed, at a very largely attended public dinner of New York business men held to celebrate the signing of the contracts, Mayor Gaynor made the statement that I had represented him at the conference. This had not been understood at the time, as I had said nothing whatever about it and neither had he.

The conference at Mr. McAneny's house, to which I have referred, was devoted to a reopening of the question of financial terms but no conclusions were reached. On the day following Thanksgiving Day Mr. Willcox, Mr. Mitchel, Mr. McAneny and I had a conference at the Union League Club regarding the situation. Mr. Mitchel was very sick at the time and left before the conference was over. A day or two after he was taken to St. Luke's Hospital with typhoid fever and did not return to his duties for three or four months; consequently he was out of the discussions all of that time. During the months of December, January and February the whole proposition was reviewed, not only regarding financial terms but many other questions as well. As a result of these negotiations it was agreed to allow the Interborough Rapid Transit Company a stated sum of \$6,335,000, which represented the average of its net profits ($13\frac{1}{2}$ per cent) for the two years ending June 30, 1911. This allowance with the allowance of 6 per cent on its new money, represented a gross allowance of 8.76 per cent.

It was also agreed that the city should be entitled to the same allowance. The figure of \$6,335,000 was arrived at after many conferences devoted almost entirely to this particular question. There were different methods suggested of arriving at a fair conclusion, but the one adopted was to take the fiscal years 1910 and 1911 and take the average of these years. They were selected particularly for two reasons: First, that they represented the very latest periods for which calculations were available, and second, they represented what is commonly called a 'fat year' and a 'lean year.'

There was little question but that the intervening years before operation would show a higher figure than \$6,335,000. The facts are that the company's net income for the following year, 1912, was \$6,499,293; for 1913, \$7,434,662; 1914, \$8,832,286, showing that at the end of the fiscal year 1916 the company was making practically \$2,500,000 more than we have agreed to allow it as its annual net profit on the old system. This is one of the prices which the Interborough Company is paying for the privilege of extending its lines, and I assume insuring itself against the competition or opposition of competing lines, whether municipally built and operated or municipally built and privately operated.

A new proposition was submitted by the Interborough Rapid Transit Company on February 27, 1912, and was approved by the Public Service Commission and sent to the board of estimate and apportionment about the middle of March.

The counsel to this Committee has asked a number of witnesses who have appeared before it why I changed my mind and agreed to a proposition with the Interborough Company after I had voted against one in the summer of 1911. I wish to say that the principal discussion regarding the present Interborough contract hinged upon the question of this allowance of \$6,335,000, but in the board of estimate and apportionment the question at issue was never whether no arrangement should be made with the Interborough Company, but always what was the exact amount that should be allowed. In other words it was not a question of principle in being willing to trade or unwilling to trade with the Interborough Company, but solely a question of the amount of the dollars and cents to be allowed.

So eminent a citizen as Mr. Seth Low, who followed these negotiations solely from the standpoint of a citizen, and always in the public interest, approved the allowance of nine per cent, and would have been perfectly willing to see a contract made by the city at that figure, not on the theory that the city should deal over-generously with the transit companies, but solely upon the ground that where a bargain was to be made involving the interests of millions of people and the expenditure of hundreds of millions of dollars, the question should be decided upon broad

lines. Some of the reasons why I supported this new proposition, and I am glad I did so, are as follows:

1. The proposition of July, 1911, against which I voted, would have allowed the Interborough Rapid Transit Company 9 per cent upon all of its old investment and all of the new. This would have amounted, on the basis of the present contract, to the sum annually of \$11,520,000. The arrangement made with the Interborough Company provides that it shall be allowed the sum of \$6,335,000 on its old investment. It must be remembered that this is not all clear profit to the company, because out of this sum it will have to pay the carrying charges of its old investment.

The company is also to receive 6 per cent, covering interest and amortization charges upon its new investment. This represents an average upon both old and new investment of 8.76 per cent, or a total annual payment to the company of \$11,212,800. Consequently by the defeat of the proposition of July, 1911, we have saved the sum of \$307,200 annually, covering a period of forty-nine years, the life of the contract. This means that there is a total savings of \$15,052,800, without including any interest; and in estimating the saving we would, of course, be justified in compounding the interest for the full period.

2. Under the present contract the company has also agreed to equip and operate all future extensions and to furnish the necessary capital on the same basis of interest and other carrying charges. Under the plan of July, 1911, it would have received an additional profit of 3 per cent upon all such investments.

3. The company also agreed to the city's contention that all the new lines should be constructed by the city under contracts let by the Public Service Commission, and none by the company, except where it may be the successful bidder in open competition with other contractors.

4. The company also conceded that the cost of carrying the engineering staff of the Public Service Commission engaged in the construction work, which up to the time of the contract had been borne by the annual budget, should be included in the general cost of construction and capitalized by the city.

5. Another concession, running into many millions of dollars, was the Interborough Company's renunciation of its claim that the rental to the city for the old subways (known as Contracts No. 1 and No. 2), would cease at the end of forty-one years, by which time the entire investment would be amortized. While the city never believed that the company's claim, from a legal point of view, was a strong one, still by the new contract this question is not open to further contention. The amount of money represented by this concession is \$24,300,000, without interest.

6. Under the new contract, the Public Service Commission is vested with a more thorough control over the classification of operating expenses, and has authority to pass upon both the character and amount of such charges, with an appeal allowed to either party.

7. The existing plant of the company is to be examined by the Public Service Commission and is to be put into absolutely up-to-date condition, the cost to be borne from the old earnings before the pooling of the lines proceeds.

8. The elevated lines to Astoria and Corona, connecting at the Queensboro bridge with the lines of both the Interborough system and the Brooklyn Rapid Transit Company, are subject to the joint operation by the two companies, thus adding materially to the facilities given to the northern part of Queensboro.

9. In the provision for the 'swapping' of the legs of the present subway, the clause making the company's obligation dependent upon the 'lien of any existing mortgage' has been eliminated.

10. The news stand privileges are to be awarded under competitive bidding under a form of contracts approved by the Public Service Commission, so that it will be possible for individuals to secure these privileges for different stations.

During the course of this inquiry, reference has been made on a number of occasions to certain suits brought to test the constitutionality of the contracts it was proposed to make. It has been charged that some of these suits were collusive. Inquiry

has also been made of witnesses, by counsel of the Committee, regarding knowledge of these actions by members of the city government. I wish to state for the purposes of this record, that except for general knowledge obtained through newspapers, that such suits had been brought, I never knew anything of them or their origin, except that last February Mr. Harkness, of the Public Service Commission, informed me that the Hopper suit had been brought at his suggestion.

The transit committee, of which Mr. McAneny was chairman, was engaged in perfecting arrangements for the submission of the Brooklyn Rapid Transit contract and the Interborough matter at the same time. It appeared that a number of questions had arisen regarding the routes to be included in the Brooklyn Rapid Transit Company's allotment of lines, and these matters had not been acted upon definitely by the Public Service Commission.

We are of the opinion that action should be taken upon both propositions at the same time. In other words, that the two contracts should be approved simultaneously.

The most important development of this period of further consideration was a letter written by Mr. Shonts to Mr. McAneny under date of May 4, 1912, advising him because of the unexpected delay on the part of the committee of which he was chairman, in making a report to the board of estimate and apportionment upon the Interborough proposition, the bankers had notified him under date of May 3d that because of changed conditions, if they did not hear from his company within the next few days that the proposition had been accepted by the responsible city authorities, the bankers would be compelled to cancel their existing agreement to finance the proposed rapid transit improvements.

Mr. Shonts also wrote a letter to Mayor Gaynor under date of May 6, 1912, explaining the situation to him and stating further that Mr. Morgan had told him (Mr. Shonts) on that day that conditions were so unsatisfactory that he might be compelled to withdraw from the agreement to finance the contracts in any event. As a result of this letter, Mayor Gaynor wrote to Mr. McAneny under date of May 7, 1912, sending him the letter from President Shonts and stating that he considered the situa-

tion of so grave a character that he desired at once to notify all the members of the board of estimate and apportionment about it; that nine weeks had elapsed since the offer of the Interborough Company, that there did not seem to be any reason for delay, and that if prompt action had been taken the contract could have been ready by that time. I believe it was on the day he sent this letter to Mr. McAneny that Mayor Gaynor asked me to call upon him. He explained the situation as I have described it in these communications, and expressed the opinion that the board of estimate and apportionment should take immediate action to approve the Interborough proposition.

I went to see Mr. McAneny immediately and after a talk with him concluded that we could not be justified in doing anything of the kind, and that until the different questions affecting the Brooklyn contract were settled, we ought not to take any definite action upon the Interborough matter.

The mayor called an informal meeting of the board of estimate and apportionment and put the question before the members. All the members were present. The mayor stated that he would offer a resolution at the next meeting approving the contract with the Interborough Company. Mr. McAneny led the opposition to this idea and I supported him. We prepared a resolution stating our unwillingness to take action immediately. This resolution was approved by a vote of ten to six, Mr. Mitchel, Mr. McAneny, the presidents of the Boroughs of Queens and Richmond and I voting for it; the mayor and the presidents of the Boroughs of Brooklyn and the Bronx voting against it.

Shortly afterward, through the good offices of Mr. Low, an agreement was arrived at with the bankers. All the questions affecting the Brooklyn Rapid Transit Company were promptly settled by the Public Service Commission, and Mr. McAneny prepared his report upon the Interborough offer, which advised its acceptance. This report is dated May 22, 1912, and was considered at a meeting of the board of estimate and apportionment held on May 24th. I was sick at the time and unable to attend the meeting, but at my request Deputy Comptroller Mathewson, who represented me, voted in favor of approving the proposition. The vote in the board upon this question was thir-

teen in favor and three against, or on the individual votes, seven to one.

At this meeting there was a thorough discussion of the financial terms of the proposed Interborough Company agreement — Mr. McAneny and Mr. Mitchel carrying on the discussion. Many of the objections that have been raised at your committee meetings, regarding the financial terms, were at that meeting of the board of estimate and apportionment four years ago thoroughly discussed, not only by the members of the Board but by citizens who attended the meeting. There were the fullest newspaper notices of this meeting, and it is safe to say there was not a single question affecting the financial side of this contract that was not brought out either at that time or within the next seven months, and thoroughly discussed in public.

During the summer and fall of 1912 the Public Service Commission was engaged in drafting the contracts with the Interborough Rapid Transit Company and the New York Municipal Railways Company. These contracts were not ready for publication until very late in the year. In their draft form they contained a number of items which were not in the agreement of the winter proceeding, and a number of other questions were given a construction which did not accord with the understanding of the transit committee of the board of estimate and apportionment. This led to much public discussion regarding the advisability of the contracts when they were finally ready for hearings before the Public Service Commission.

There was fully two months' discussion of the subject. During this period the term of Mr. Willcox, Chairman of the Public Service Commission, expired, and he was succeeded by Judge McCall. Judge McCall gave a public hearing upon the contracts lasting about two days. This hearing was well advertised and the opponents of the contracts appeared and stated their objections. Mr. Mitchel was present and stated fully the reasons for his opposition to the contracts.

Subsequent to this, Mr. Mitchel and Mr. Maltbie submitted to the public, through the press, an alternative plan for an independently built city subway system. This plan was splendidly advertised, all the newspapers giving it copious notices, most of them

publishing diagrams of the proposed system. This proposition appeared on a Monday morning. A number of people expressed their opinions regarding it—some very strong in their opposition.

I do not believe the new alternative proposition received the slightest newspaper notice after the second day. I mention this simply to bring before your Committee what I believe to be a fact, that if there had been any public interest in an independently built subway, or any substantial opposition to the contract proposed to be made with the Interborough Rapid Transit Company, there certainly would have been enough public opinion behind the counter proposition to justify continued discussion of it and a strong fight in its behalf. There was no such support, but, on the other hand, the people of the city generally, particularly in its business interests and especially those of the great shopping districts, were I believe, unanimously in favor of an arrangement with the Interborough Rapid Transit Company, and they were in favor of it with full knowledge of its financial details, because there had been thorough publicity of those details, covering a period of more than a year.

The contracts were finally approved at a meeting of the board of estimate and apportionment held on March 18, 1913. The contracts are known as Contract No. 3 with the Interborough Rapid Transit Company, and Contract No. 4 with the New York Municipal Railways Company."

Now, I see that these are distributed among the members of the Committee.

Mr. Moss.—We will suspend until 2.30 P. M.

Suspension.

AFTERNOON SESSION.

Mr. Moss.—"We want to direct your attention," I am quoting now, "Mr. Shonts stated the reason for entering into such a contract with Mr. Stevens that neither himself nor Mr. Stevens nor Mr. Freedman was to receive any benefit from this contract,

but that in connection with securing the contract which had been closed between the city of New York and the Interborough Company, Mr. Shonts had found it necessary to make certain commitments and incur certain obligations and that it was by means of the Stevens contract that he expected to meet and pay those obligations. Upon learning those facts, a subway director went to the office of J. P. Morgan and told Mr. Morgan what had happened." Now, I would like to have you think back over the interview that you had at your office, which you spoke of on your former appearance, and recall, if you can, what was said to you about Mr. Shonts having stated that he found it necessary to make certain commitments and incur certain obligations in closing the contract between the city of New York and the Interborough Company.

Mr. Morgan.— I certainly don't recall any such statements as that.

Q. Will you say that no such statement was made to you? A. I say this, that it would be my opinion that if such a statement had been made to me in that way that I should have remembered it, but I don't recall any such statement being made to me. Certainly, I can say that such a statement never got to me — never got into my mind.

Senator Thompson.— I don't think you ever heard this, Mr. Morgan, and if you don't mind I'd like to read this to you. On February 2, 1916, Mr. George W. Young was sworn before this Committee and he produced a letter which he had received from Mr. Gardiner M. Lane. Now, Mr. Colby was then acting for the Committee and asked Mr. Young to produce the letter and he demurred and finally, on asking me, I directed him to produce it. Mr. Young says, "I would like to have an opportunity to call my counsel on the telephone," and he went out and talked to his counsel on the telephone and took a recess for ten minutes, and when he came back he produced the letter. The letter reads like this (this letter was signed by Mr. Lane):

"My Dear Mr. Young:

I was sorry to have no opportunity this morning to speak to you about your personal letter of September 19th. On

thinking the matter over pretty carefully it seems to me much better that I should not have the memorandum sent me in your letter."

It seems that this memorandum was made by Mr. Young, sent to Mr. Lane and Mr. Lane returned it with this letter.

"This is a very delicate matter, and while it seems to me wise that each of us who is conversant with the affair should preserve his own statement, yet I think he should not have the responsibility of keeping the statement of others. Death, for example, might cause these statements to come into the possession of others than those to whom they were originally entrusted and in that way they might even become public. We who stood together know the understanding of one another, and if we each preserve for ourselves the notes made, we shall all be in a position to act together in case of need. While the matter was undecided, it was well for each of us to know just what the other's understanding of the situation was. For this reason I showed you my memorandum which you read. I have now read yours, but return it to you for the reasons I have stated above. Of one thing in your additional memorandum I am a little doubtful. It is my recollection that I drafted my memorandum about the 30th of June and that your visit to my office was in the morning of July 1st. I have no recollection of your being in this office on the 25th."

He changed the date, you see.

"I have, of course, made no copy of your memorandum. I hope you will agree with me that the conclusion I have reached is a wise one. I cannot tell you how sorry I am, for personal reasons, that you are no longer one of the directors of the Interborough.

Very truly yours,

GARDINER M. LANE."

The memorandum enclosed is very long and you can have it read if you like, but for the purpose of this, I will read the addi-

tional memorandum. "Additional memorandum referring to proposed Stevens contract."

Mr. Lindabury.—I guess I misunderstand. This is Young's memorandum?

Senator Thompson.—This is Young's memorandum, which Lane sent to Young, which Young sent to Lane and Lane returned in this letter. Mr. Lane's memorandum further stated that "Upon leaving the meeting of the Interborough Board to-day, Mr. Lane requested me to go around to his office with him. On reaching the office we proceeded to Mr. Lane's private room and Mr. Lane showed me a memorandum which he had drawn up, stating what had taken place at the special meeting on Tuesday. This memorandum, in addition, went on to state that following the special meeting Mr. Shonts had taken him aside and stated that he wanted him, Mr. Lane, to understand the reason for entering into such a contract with Mr. Stevens; that neither himself nor Mr. Stevens nor Mr. Freedman was to receive any benefit from this contract, but that in connection with the securing of contract which had been closed between the city of Greater New York and the Interborough, Mr. Shonts had found it necessary to make certain commitments and incur certain obligations, and that it was by means of the Stevens contract that he expected to meet and pay these obligations. Mr. Lane's memorandum further stated that upon learning these facts, Mr. Lane had gone to the office of J. P. Morgan & Company and advised Mr. J. P. Morgan, Jr., of exactly what had transpired at the meeting referred to in his memorandum, and of the statement which had been made to him by Mr. Shonts."

Mr. Morgan.—Mr. Lane is dead. I couldn't contradict him. I can only say I really have no recollection whatever of any such statement as that in that way.

By Senator Thompson:

Q. Of course he is very exact in that memorandum and he said that this statement was made to him by Mr. Shonts and he stated that he told this exact thing to you. Of course when you were before us on the 27th of October, last, you testified to Mr. Reed

and Mr. Lane being to your office and, of course, they did come, and that was after this date mentioned in these memorandums. I think you also testified that you also had considerable confidence in Mr. Lane.

By Witness:

A. I have considerable confidence ——

Q. Mr. Lane was absolutely square, absolutely straight. There is one thing about this. This, of course, is Young's memorandum and I note the suggestion made by Mr. Lindabury. Young wrote this and stated in the letter he sent to Mr. Lane. Now, Mr. Lane has got a memorandum over there in Boston which is his memorandum, and in justice to everybody I realize it would be much better to have this memorandum. That would be Lane's. Now, I have been to Boston and I have tried to get it, and Mr. Cutting, who is connected, as I understand, with the Lee, Higginson Company, who is connected with your firm in some way, is the executive —— A. He is not connected with our firm in any way.

Q. He seems to be afraid, through his lawyer, that he is going to slander somebody if he produces this memorandum that is in Mr. Lane's effects. Now, it occurred to me that inasmuch as this mentions you personally that you, by asking for this memorandum, we could get the original, and if we could, we could clear up any possible question as to this thought of Mr. Young's, as well as to also show the exact situation as it is. A. All I remember about the interview (and after I try to remember I have no further recollection than I had before), I don't think it is for me to butt in between Mr. Lane and his executors.

Q. You see perfectly the reason, Mr. Morgan, why we couldn't examine Mr. Davison or anybody else except you about this memorandum. We couldn't examine anybody in your firm but you. A. I have been examined.

Q. This memorandum mentioned you personally and this is the important thing; we couldn't talk to anybody else down there. Now, don't you agree with me that it is important and better for you and for the Interborough and Mr. Shonts and Mr. Lane and everybody concerned to take Mr. Lane's personal memorandum if we can get it? A. I don't see why.

Q. Well, why not? A. Why is it better for me? Why better for Mr. Shonts? Why better for you? I don't see that it has anything to do ——

Q. Well, you raised the question, I am glad the question is raised here that Mr. Young might have made this memorandum himself after the letter was written.

Mr. Lindabury.—I guess you misunderstood me. I asked about the Lane memorandum. I understood you to say you had it and I picked it up and read it, thinking it was the Lane instead of the Young, but in reading it and trying to listen to Mr. Moss at the same time I did not discover the error. I was under the impression it was the Lane memorandum.

Mr. Moss.—But the question I can see is this is Mr. Young's memorandum and he might have changed it after he got the letter from Mr. Lane.

Mr. Lindabury.—Why isn't the one thing about as high class evidence as the other? Both are hearsay.

Mr. Moss.—I believe that Mr. Morgan, if he really would help me, could get that Lane memorandum in Boston.

Mr. Morgan.—No, I won't help you to do it.

Mr. Moss.—Why won't Mr. Morgan do this? He is an interested party, at least to the extent of having been named. Why won't Mr. Morgan write a letter to Mr. Cutter and say "I have no objections?"

Senator Thompson.—Mr. Shonts did that, but that didn't get it for us.

Mr. Moss.—It may be that Mr. Lane's executor is holding back ——

Mr. Morgan.—Mr. Lane's executor has not communicated with me on the subject at all.

Mr. Lindabury.—It strikes me, gentlemen, that if you want to help Mr. Morgan in a friendly way to get the paper you would ask for it out of court, of himself or his counsel.

Senator Thompson.— I have asked for it out of court and in court and in the evening and in the morning and in the day time and can't get it.

Mr. Lindabury.— Don't call Mr. Morgan to the witness stand and ask him in this public way ——

Senator Thompson.— It concerns the public.

Mr. Lindabury.— To declare himself on the stand about it.

Senator Thompson.— It is the public. It is not me. That is the reason I do it in public.

Mr. Lindabury.— You certainly have not asked me and I have not asked Mr. Morgan to do anything about the matter until you spring it right here in this public way.

Senator Thompson.— It is the public that is interested, Mr. Lindabury, I don't care, but to represent the public, and it is a public interest. That is the reason I do it in public — because I think it is my duty.

Mr. Lindabury.— You ask Mr. Morgan, who has no power over the executors, who has no interest in the affairs of Mr. Lane's estate, to go out of his way and ask something of them that he is not ——

Mr. Morgan.— That is my position.

Mr. Moss.— My suggestion does not have Mr. Morgan ask him to do anything, but leaves him free from the fear he may have of annoying.

Senator Thompson.— I think Mr. Morgan and I both could get after it — I think we would be invincible.

Mr. Lindabury.— I am sure you and Mr. Morgan would make a strong team, but we are not travelling that way just now. If you could get the executors to say that they would give you a copy provided Mr. Morgan would consent that they are hesitating about furnishing it because Mr. Morgan might not like it, that would be another thing. I think I would get Mr. Morgan's consent very soon.

Senator Thompson.—I can't see any one that would be endangered by it. They say the matter might be libelous; that is the excuse they give us. Isn't that so, Mr. Schuster? And I can't see how, if Mr. Shonts consents and Mr. Morgan consents, and they consent on behalf of the Interborough, then I can't see how anybody else can be affected.

Mr. Morgan.—I could not consent to anything.

Mr. Moss.—Hasn't the Interborough and Mr. Quackenbush consented, and Mr. Shonts and the Interborough — there is only three left, Mr. Morgan — when Mr. Morgan's position is noted, there is no possibility of there being any libel.

Senator Thompson.—Let him ——

Mr. Morgan.—I haven't the slightest objection to anything you can do.

Senator Thompson.—Let him explain the difference. A fellow comes to me and he says: "You are Senator. I want a job. If you will recommend me I will get it." I sit right down and write him a letter and say, "Mr. Comptroller, I want you to appoint John Jones to this job," and the court don't pay any attention to that. But, if I say to the fellow, "Now, here, I want you to get this, and I hope you do get it," and I go to the comptroller and say, "I want you to do this, please. I want it," and he will be appointed. That is the difference between writing a letter ——

Mr. Morgan.—You are asking me to take up the matter. I am perfectly willing that the memorandum that they have should be given you; it makes no difference to me at all, but I don't see that I have any claim on the executor that I could ask. Is there any question but that the Lane memorandum agrees with your memorandum?

Mr. Quackenbush.—I never heard of the Lane memorandum until Mr. Young testified to it on that day. You went to Boston and were after correspondence which we had. We didn't know about that.

Senator Thompson.—And you wrote the same letter about ——

Mr. Quackenbush.—I had it at that time in the file of correspondence — have it yet.

Senator Thompson.—That was not what we were after. All I want to do, I want to have everybody understand that this Committee do everything we can to get that original memoranda. We have gone over there and hired lawyers, and commanded it, and gone privately, and I had Mr. Shonts write a letter, and I took that, and they wouldn't give it up because they said it might be libelous, and the courts held that they had no authority to get it. I tried to pass an act in the Legislature to get us authority, and we got it held up until the rules committee is in session, and it didn't pass. We think it is important to get the Lane memorandum, made by Lane himself.

Mr. Morgan.—You seem to have done all that you could very well do.

Senator Thompson.—I didn't want it to pass without asking Mr. Morgan to help.

Mr. Morgan.—I am not going to take any action except that if saying I am perfectly willing the executors should do whatever they see fit in the matter. I have no complaint to make.

Senator Thompson.—You couldn't ask Mr. Cutting to come to New York?

Mr. Morgan.—Certainly not.

Mr. Moss.—Did you have any relation with Kuhn, Loeb & Company, who financed the B. R. T.? Any business relations?

Mr. Morgan.—Through long years we have had endless business relations.

Mr. Moss.—Did you have any conferences with them while you were representing the financial side of the Interborough, they representing the B. R. T.? Did you have any conferences?

Mr. Morgan.—My only recollection of having any conference with them (I think I am pretty clear on that), the only conference we had with them in that connection, we suggested whether they would like the participation in the syndicate of the I. R. T., and

they said no, they thought it better that they should finance the Brooklyn, and we finance the Interborough, without having a joint interest in the thing anywhere.

Mr. Moss.— But there certainly was no antagonism?

Mr. Morgan.— None at all.

Mr. Moss.— Referring to the syndicate, do you know what profits you have made in the syndicate in addition to the original two and a half discount?

Mr. Morgan.— You mean — I want to get your question right.

Mr. Moss.— What I wanted to get at is the proportion of interest in profits of the syndicate that you retained. What that profit was we can easily figure out.

Mr. Morgan.— Our profit would be proportionate to the amount of bonds we had in the syndicate. We are participants, like anybody else. We make no more per cent.

Mr. Moss.— What per cent?

Mr. Morgan.— Eight per cent. Twelve million.

Mr. Moss.— That is what went to the insurance company.

Mr. Morgan.— We have a participation besides.

Mr. Moss.— Did you know Mr. Oakman?

Mr. Morgan.— Yes, I know him.

Mr. Moss.— Did you have any interest with him?

Mr. Morgan.— I don't think we did.

Mr. Moss.— Are you associated with Mr. Oakman in any companies?

Mr. Morgan.— Mr. Oakman is the receiver of one of the companies that made the Interborough company. That is my first recollection of any dealings with him. Also, he had something to do with the Hudson tubes, and we have an interest in the Hudson tubes.

Mr. Moss.—Mr. Oakman was likewise a director of the B. R. T. or one of the subsidiary companies. I have a letter among my papers here somewhere, in which Mr. Willcox notifies the mayor that a committee of the B. R. T. is going to call on him, which consists of Mr. Brady, Mr. Oakman and Colonel Williams, and then I find in the — did you know that the Hudson tube proposition was being made for subway?

Mr. Morgan.—I heard that it was being made, but I didn't know anything more than that about it.

Mr. Moss.—Wasn't there a conference between you gentlemen that day about that proposition? Did you consider it friendly or unfriendly to the Interborough?

Mr. Morgan.—Unfriendly with the Interborough, I think.

Mr. Moss.—The point that I want to make in this question is — I don't care how you answer it — it has been suggested that the offer of the Hudson tube people was an offer really made in a friendly way to the Interborough to gain some point in position which would be left to the Interborough if —

Mr. Morgan.—I didn't figure it that way.

Mr. Moss.—As to the \$135,000 matter. I mean your own personal matter. Do you remember the original agreement for your compensation or was there any?

Mr. Morgan.—No.

Mr. Moss.—When you went into this matter in 1910 it was simply looking forward to the Commission?

Mr. Morgan.—From which we would have taken our pay.

Mr. Moss.—Was it understood what you were to do in order to receive compensation, or was that indefinite?

Mr. Morgan.—That was indefinite, yes, also vague.

Mr. Moss.—As far as there was any understanding, weren't you to obtain commissions or bond discounts when the matter went through?

Mr. Morgan.— Presumably.

Mr. Moss.— Whatever form it might take?

Mr. Lindabury.— It was contemplated then it would be on a commission basis. It would be a matter of purchase that came up later on in — up to 1912. It was entirely on commission.

Mr. Moss.— Now, was that \$250,000 paid to you solely for advising the Interborough people or was it paid for conferring with other people about city officials?

Mr. Morgan.— Whenever we conferred with city officials we also conferred with the Interborough, so you may say it was entirely for the Interborough, for we were acting for the Interborough.

Mr. Moss.— It was understood you might differ with anybody else.

Mr. Morgan.— Yes.

Mr. Moss.— Now, you spoke of the interest the Pennsylvania Railroad people took in this matter. Did Mr. Berwind appear in those transactions with the Pennsylvania?

Mr. Morgan.— No, I don't think he did.

Mr. Moss.— Mr. Berwind is an important man in the Pennsylvania Railroad Company. You don't know whether Mr. Berwind took a hand in the relation of the Pennsylvania Railroad Company to the situation?

Mr. Morgan.— I don't know, no.

Mr. Moss.— When you took up the matter again in November, 1911 —

Mr. Morgan.— In the early part of 1912.

Mr. Moss.— When you took it up again, was it your intention to make a charge if it failed again?

Mr. Morgan.— We didn't make any arrangement then any more than we had the first time. If it had failed again after the two years' negotiations, we could have made a similar charge.

Mr. Moss.—Weren't negotiations just starting again with the I. R. T. in November when you took that payment?

Mr. Morgan.— I don't recall; I was abroad.

Mr. Moss.— Mr. Prendergast indicated in November they were pretty busy with the I. R. T. again.

Mr. Morgan.— I don't know.

Mr. Lindabury.— I think you have our correspondence on that.

Mr. Moss.— So far as Mr. Morgan is concerned as a director, his relation with the Interborough, the correspondence does not show any transactions, any dealings, any letters, but I think that the chronology of the case is established by the testimonies which show that in November the Interborough and the Public Service Commission were in negotiations.

Mr. Morgan.— I think it was quite possible because I noticed in the voucher that you read the other day that it said if we brought the transactions to a close within a certain time the money should be paid back.

Mr. Moss.— That is the other \$250,000 that went to you and the syndicate. That leads to this question: Inasmuch as you put a mark under the account, closed it up as to your personal fees and got your \$250,000 whether or no, but as to the other \$250,000 which went to you and the association, it was written in the voucher that if the matter was resumed and went through, the \$250,000 to the association would be credited. Why wouldn't the same arrangement be right for \$250,000 that you took to your firm personally?

Mr. Morgan.— I don't know anything about that.

Mr. Moss.— Is there any reason why one \$250,000 should be treated different from the other?

Mr. Morgan.— I don't know. I should think very likely.

Mr. Moss.— Doesn't it occur to you that in November, 1911, when one voucher was taken for \$250,000 it indicated it was to be repaid if the transaction was really closed — ended?

Mr. Morgan — I don't know. There might have been twenty reasons for that.

Mr. Moss.— There is a hope expressed in one of those vouchers, and a willingness to refund, but as for your personal \$250,000 thus remains the drawn line, the closed transaction.

Mr. Lindabury.— This bill, I think, was sent in some two months before, and was pending. Now, when it was pending, nobody supposed, not even the Interborough, that the matter would ever come up again, but I think there was, as you call it, something stirring in the latter part of November, then at that time they added that proposition with respect to the credit of the \$250,000 because of the hope that the Interborough had that something would come of it.

Mr. Moss.— Why should not it have been added to Mr. Morgan's voucher so that he would refund or credit it upon his commissions or discount?

Mr. Lindabury — Because the work had been done and the money had been earned — just as much as earned.

Mr. Moss.— But it was an unsuccessful transaction.

Mr. Lindabury.— That was for holding the money all this time. Now, if they were able to use it as contemplated within the next two months, as provided, why then they might have thought that that additional two months to two and a half years need not count and the \$250,000 might fairly be credited.

Mr. Moss.— Had you incurred any expenses that would be out of this \$250,000?

Mr. Morgan.— No more than the ordinary expenses of running the office which we always have.

Senator Thompson.— The matter was taken up from the time of the letter of Mr. Rae of the Pennsylvania Railroad. That is October 28th.

Mr. Lindabury.— Who was that to?

Senator Thompson.— The mayor.

Mr. Lindabury.— I see. Now that bill had been sent two months previously.

Mr. Moss.— There had been prior to that, you remember the Freedman letter that came in shows the communication with Mr. Hunter of the Pennsylvania Railroad coming down to see the mayor. That was before that.

Senator Thompson.— This is his formal letter to the mayor.

Mr. Lindabury.— You see, before that, as I said, the bill had been sent in. When it reached the board they dealt with it; in November they added that credit clause, probably because they then thought on account of this movement on the part of the Pennsylvania, that something would come out of it after all.

Mr. Morgan.— I may say you are guessing; we don't know — I don't know — what the conversations were. I have no opinion to give.

Mr. Lindabury.— I am drawing my inferences from the situation and I think the bill was sent in in September or the first of October.

Mr. Moss.— Of course the bill not being paid until November 16, the transaction morally and legally would speak from the time it was recognized until November 19th.

Mr. Lindabury.— But it is this way. If it had not been regarded as all around dead, the bill would not have been sent and the fact that this condition is added on the part of the Interborough after the Rae negotiations were opened up again, I think rather explains the course that events took. That is all. You can draw an inference as good as I can, when you know the bill was accepted before this Rae letter.

Senator Thompson.— I understand.

Mr. Moss.— Who originally got you interested in the Interborough financing?

Mr. Morgan.— What bank? The first one I don't remember. The proposition came up to us to put out some notes to refund

some Interborough notes which were coming due, but who brought it to the office I don't know.

Mr. Moss.—Mr. Cram, in one of his short speeches—he never made very long ones—in the Public Service Commission when they were discussing this contract, expressed his dissent. He characterized them as being the schemes of the Ryan-Belmont-Morgan people, indicating by that question a sort of standing interest in subway matters in Ryan, Belmont and Morgan. Had you any association with Mr. Ryan?

Mr. Morgan.—I think not.

Mr. Moss.—Mr. Belmont?

Mr. Morgan.—We had associations in building the subway originally; we have considerable interest; put up a good deal of money.

Mr. Moss.—There was a time when Ryan and Belmont stood together.

Mr. Morgan.—We had nothing to do with them.

Mr. Moss.—Your interest with Belmont was after——

Mr. Morgan.—No, after the combination with the Inter-Met was made, we sold all the securities we had.

Mr. Moss.—Didn't you have a practical interest in subway matters from that time that you have just mentioned?

Mr. Morgan.—I don't remember the dates here; they are not in my mind.

Mr. Moss.—Wasn't it in your contemplation as far back as that period that your house would become associated with the building of subways in New York City?

Mr. Morgan.—Not taking the lead. Mr. Belmont had taken the lead. We helped Mr. Belmont and were glad to do it. We wanted the subways.

Mr. Moss.—Then you helped Mr. Belmont. Mr. Belmont continued to be a director in the Interborough and it was pretty

generally understood among financial men and practical business or railroad men that you people were interested in the question of subways.

Mr. Morgan.— Oh, I think it was.

Mr. Moss.— And had friendly relations with the people that might be interested in the actual construction. You were looked upon as the prospective financier of any such proposition the Interborough was in position to make.

Mr. Morgan.— I don't know. I should think it very likely.

Senator Thompson.— There was one other thing.

Mr. Moss.— When Mr. Stetson entered into these conferences, sometimes with city officials and sometimes with Interborough men, was he acting as your counsel?

Mr. Morgan.— Yes, sir.

Mr. Moss.— For the purpose of seeing the securities were safe.

Mr. Morgan.— Yes, sir.

Mr. Moss.— Legally, and you don't know of any relations where anybody else than Mr. Stetson sustained their legality. He was advertised generally, I notice, as having given his opinion as to their legality. Did you know about the suit that was brought to test their validity?

Mr. Morgan.— I didn't know anything of it. The matter should be judically settled before we undertook it.

Mr. Moss.— Was that before Mr. Stetson got through with it? Did he understand that?

Mr. Morgan.— I think so.

Mr. Moss.— Did Mr. Stetson converse with you as to the procedure that was to be taken to test these?

Mr. Morgan.— We had nothing to do with that procedure.

Mr. Lindabury.— The letter of May 12th recites that.

Mr. Moss.—Mr. Stetson must have known who brought the suit and the general nature of the suit and the way it went through. It would be up to him.

Mr. Morgan.—He would naturally know it, yes.

Mr. Moss.—It has been alleged and proved that the taxpayers who brought these actions, some of them were actually financed by the Interborough Company, bills of lawyers were paid by the Interborough Company. Mr. Stetson never mentioned it to you?

Mr. Morgan.—I don't think so. He did not.

Senator Thompson.—There was some question here about a letter—a letter that Mr. Colby and I had some controversy over—that you brought to Mr. Shonts after Mr. Lane came. After that you talked with Mr. Shonts?

By Mr. Morgan:

A. I talked with Mr. Shonts, yes.

Senator Thompson.—Now, the suggestion was made that you wrote a letter to Mr. Shonts about that.

A. I wrote no letter to Mr. Shonts.

Senator Thompson.—I presume you looked through your private correspondence?

A. Yes. We have shown letters from the file.

Mr. Lindabury.—Mr. Morse saw the whole thing in its virgin condition.

Senator Thompson.—This Committee is under obligations to Morgan & Co. in the way they have turned over their files to us. I want to mention the order and method we find among them.

A. I haven't anything to do with anybody else's files; I certainly know how to take care of my own.

Mr. Morgan is dismissed and Mr. PRENDERGAST takes the stand. Having been previously sworn he testifies as follows:

By Mr. Moss:

Q. When did you become the mayor's representative in these negotiations? A. As stated in the statement I read to you this morning in the month of November, 1911.

Q. Did he invite you directly to be his representative or did that simply shape itself? A. I think you have very well expressed in your question — it shaped itself.

Q. It drifted that way and you found he was not attending the conferences; he referred to you and spoke to you about it? A. It was only at that time that I commenced to attend the conferences between the committees of the board of estimate and the Public Service Commission and the representatives of the railroad company.

Q. Did you feel yourself willing to be his representative? A. I did.

Q. I call your attention to one of the newspapers, April 20, 1911. This gives what purports to be a statement from you addressed to the mayor. It starts out "I want you to distinctly understand that you now have arrived at that stage in your career where you are going to find that there are some men who will not"—I didn't begin at the beginning. The comptroller's letter is directed against the mayor personally and in the first paragraph he charges: "For so many years you have been in the habit of calling people names, misrepresenting their positions and browbeating them in general for your own private ends that this practice has become a passion with you. I want you to distinctly understand that you have now arrived at that stage in your career where you are going to find that there are some men who will not tolerate these propensities."

Senator Thompson.— You wrote the mayor that?

A. That letter I wrote the mayor in answer to a letter the mayor had written to somebody — I think the president of the Civil Service Commission — in which he very severely criticised my attitude. As I say, there is more of it just like that.

Mr. Moss.— There is a little more in this letter. One of the criticisms was that you had appointed a man who was a connection of Mr. Campbell — an appointment of some one who was connected with Mr. Campbell, the Interborough treasurer.

A. No, Mr. Moss. The connection of Mr. Campbell of the Interborough Company was only appointed in 1915.

By Mr. Moss:

Q. Oh, that was after? A. Yes.. A long time. Four years after.

Q. Now, I quote some more from this letter. "You assert that you have not tolerated any dismissals for political reasons. I cannot help recalling a few cases in point which show the hollowness of your statement. A deputy commissioner in charge of a prominent department in Brooklyn desired to be kept in the service. His friends approached you and you snarlingly told them that man worked against me.

The man lost his job. Why did you force him out? Was not the reason political? In another board over which you have absolute control the secretary has been in the city service, I think almost forty years. He was put out immediately after you had made your new appointments in that board and his place was given to a democratic district leader in Brooklyn. The district leader is a fine young fellow and I am glad he got the job.

In another board when your appointees went in they found a republican secretary. He was promptly dispensed with. I asked one of the commissioners why he had been dismissed and he stammeringly told me that the secretary had been in the habit of having people call on him on political business. Would it not be more honest to come right out and frankly say: 'We wanted his job and we took it from him?' I could give two columns of similar instances, but I think that these few will suffice. Furthermore, an analysis of your appointments and mine will prove that I have appointed more democrats than you have republicans. You seem to think that all of the positions included in the list of ninety-seven cases which your commission proposed to classify are filled by appointees of mine. Such is not the case. Twelve are vacant and twenty-nine were in the service before I came here and have been retained by me. Of the 145 exempt places at my disposal, in my department, there are only 129 filled at the present time. This reduction I have made for reasons of good administration and economy. The fact that such places have not been used by me disproves conclusively your claim that I am using these exempt positions for purely political reasons."

Then I pass over to the last paragraph. "You say in your letter that you cannot be party to a wrong. Who would ever suspect you? The morning paper indicated that the general depositors of the Carnegie Trust Company will be paid sixty cents on the dollar. This means that the city of New York will realize sixty per cent on the \$500,000 of the \$1,000,000 deposited in that company be one of your appointees who is still in office and whose powers you propose to enlarge materially by your new charter, while his very presence is a disgrace to the city of New York."

A. That is my letter.

Q. Yes. Now, that was in April, 1911? A. I meant every word of it, too.

Q. Now, I will take another one. This letter is dated August 18, 1911. A. That was dictated on the steamer as I sailed away.

Q. We are getting down close to the serious matters of 1911, which was a very busy year. In this you discuss the charter which you say the mayor had drawn with the assistance of Mr. Easton. You draw attention to the fact that the copies on that title page bear the superscription, "Prepared under the direction of the Corporation Counsel, Archibald R. Watson."

"Everybody now realizes what an absolute atrocity this attempt at a charter was. It is not going too far to say that it was the most lamentable effort of the kind ever set before the public." I am quoting now from the Sun.

"Its construction was absolutely worthless, and it teemed with inaccuracies. It presented a fair index of what we might expect from that quarter."

Senator Thompson.—Who says that?

Witness.—I say that.

Mr. Moss.—Mr. Prendergast.

Witness.—That is my characterization of the charter, a proposed charter which was prepared under the direction of Mayor Gaynor and the Corporation Counsel's office.

Mr. Moss.—"The present draft is a much better instrument. As far as its workmanship is concerned, it has been fairly well done. This is due to the fact that the City Committees of the

Senate and the Assembly called to their help a man who understood how to draw bills and frame charters. While the literary construction of this charter is better, it is filled with the same glaring attempts to grasp power and to conduct this city government on a personal basis as were evident in the first Gaynor charter.

While this new charter was being prepared Corporation Counsel Watson was in Albany nearly all the time conferring with those who were drawing the charter. Different representatives of his office were there all the time. Frequent visits were made to the Committee on Draft by other well-known representatives of Mr. Gaynor. Consequently he must assume his responsibility for this charter. The responsibility cannot truthfully be shifted to anybody else. If Mr. Gaynor and his lackeys were disposed to frame a good charter for this city, everyone would welcome it but they have done exactly the opposite. What could be worse than the attempt to concentrate in the hands of the mayor the absolute direction and supervision of all subway development. Under this new charter he would have a veto power over all plans, routes and contracts. Who on earth but himself ever suggested that he should have this power? Who wants him to have it except some of his interested friends? If he had displayed any statesmanlike intelligence in treating the subway question an effort to give him the direction of it might have some justification but the contrary is the fact. He has been on every side of the question. He does not seem to have an idea upon it that lasts him as long as it takes him to walk over the Brooklyn bridge. He is to-day in the position of being a rank obstructionist and in the face of this palpable fact it is proposed to let him say hereafter what routes shall be built, what company shall operate them and what contractors will get the awards. This power that should not be left to any one man, I don't care who he is, and certainly it should not be left to the present mayor."

You haven't recently heard or read any worse criticism of the mayor than these which you yourself wrote, have you? A. Well, as to my qualifications as a critic, of course, I would not like to express any personal opinion, except those who are criticised usually say they are not bad. But now, just let's us

understand each other, Mr. Moss. In my statement this morning I called your attention to this fact. I put it as plainly as I knew how. "My relations with the mayor for more than a year had been very unpleasant, but he stated to me that morning that he hoped, for the sake of the city, that we could work together upon this question and work harmoniously. I assured him that I was quite willing to work harmoniously on this and on every other question."

Q. It is one thing to work harmoniously with a man when you have to work with him as a brother official; it is another thing to act as his representative? A. No, I do not think it is an unusual circumstance at all, providing you are treating him as a brother official.

Q. Did you trust him? A. Did I trust the mayor? In what sense do you ask that?

Q. I ask you in the sense that you would be willing to represent him. A. Yes, I told you before I was willing to represent him and I trusted him to this extent fully; that as his representative if anything transpired that he would be willing to do exactly as he told me he would be willing to do and agree to whatever I agreed to.

Q. Did you think then that you were his representative in the sense of directing what to do? A. No, not at all. By no means, and there is nothing of that kind implied.

Q. I didn't say that there was, but I wanted to make sure. A. May I continue? You know very well from long experience in public life, Mr. Moss, that when men are thrown together and contrary currents get between them, and they are both men who speak their mind pretty freely and have a good deal of Irish blood in their make-up, that they are apt to fight and fight hard.

Q. Mine is Dutch and I am not on equal ground. A. I never suspected your being Irish. They are apt to fight and they fight hard, just as hard as they know how. That is the way I always fight and in the year 1911 it was one continuous struggle between Mayor Gaynor and me. The young man sitting alongside of you knows that very well. So there was no question, I might say, during that whole year from December, 1910, right up to the latter part of October, 1911, over which Mayor Gaynor and I didn't

clash. I don't want to comment on that now any more than I can help and I wouldn't mention it now only for the fact that you bring out these letters. We were very antagonistic to each other. Almost everything — more than I said in that letter or that statement I made when leaving the country on the 8th of August about the subway question I said at the Academy of Music in a speech which I will be very glad to furnish you, discussing the charter and discussing the subway question and he was in the house at the time and heard what I said.

There was no question as to the way we regarded each other. We were positively antagonistic. But we came to a change in affairs. The Gaynor charter was beaten — beaten through the efforts of a number of men and I was one of them.

Senator Thompson.— Did you write these letters because you believed what you said was so or did you write them for the purpose of beating the charter? A. One to tell the mayor exactly what I thought of him and the other for beating the charter. I believe everything I said, Mr. Moss. It is all true. There isn't a thing I said in those letters that is not true.

By Mr. Moss:

Q. Then the puzzle remains how you would consent to being his representative in the slightest degree. A. Because now, that might puzzle you, Mr. Moss, it might not puzzle other people, and it might entirely mystify others. It doesn't me, because I have been knocking around in public business now for about eight years and I know the man you are on terms of the bitterest enmity with one day, you are on good terms with the next.

Senator Thompson.— I hope you are better informed about these subway contracts.

A. I am perfectly informed about the thing I mention. Don't worry. That runs all through public life

Mr. Moss.— Don't get too far away from the point. Let's assume that your hypothesis is correct and that the Senator who was criticising the Governor may vote for him.

I nominated William Travers Jerome in Cooper Union for district-attorney when it was public knowledge that we were abso-

lutely antagonistic to each other. Those situations are not the situations I am speaking of. We may have to deal with each other in official life because of our conception of public duty but I draw the line when you allow the man to be what you call Mr. Gaynor in these letters, to be my representative.

A. Well, Mr. Moss, what you would do under a given set of circumstances I don't think is at issue at all. It really isn't of very much interest to me. What I would do is my own affair.

Q. What you would do is not interesting to me but interesting to this Committee. You believed that Mr. Gaynor couldn't be trusted if these words are to be taken in their natural significance. You believed he had retained in office a man as city chamberlain whose retention in office was a stinging disgrace and we won't have to talk about any individual to know just what you mean to imply there. You said he was grasping for power in order that he might serve his interested friends. Who do you think his interested friends were? A. I thought there were a great many people who were very much interested in the settlement of the subway question.

Q. Interborough people? A. Absolutely. And they had no improper motives.

Q. If you believed that the chief magistrate of the city was so beholden to the Interborough Company, concerning whom you have written your mind as an individual and about whom you have written as a company, how could you dare to tie up with him? Well, I won't ask that question because it is merely argument. The answer is naturally implied in the question. A. There is nothing to it.

Q. I think there is something to it. A. I said Mayor Gaynor had tried to grasp power in the charter and I meant it. And I repeat that I could grasp power to-day for interested friends and there would be nothing important in their action.

Q. In August, 1911, you were criticising Mayor Gaynor for trying to grasp power in the charter to help his Interborough friends and within two months, I think, of that time you were acting as his representative by your own choice. A. He asked me if I would be willing to do that, and I stand by that to-day.

Q. I thought you drifted into it. I understood that it naturally developed in your intercourse with each other. He asked

you to do it and you did it; you represented him. When you wrote this letter in August, 1911, in which you refer to his interested friends you knew the position he had taken in the letter to the people of the city of New York on July 19th? You refer to it, I think, in your statement? A. Yes.

Q. Did you believe he meant what he said in that letter? Did you believe that was an honest speech? A. I decline to answer any such question.

Q. Why? A. Because I don't wish to discuss what Mayor Gaynor meant or thought.

Q. Let me make myself clear. The purpose of my asking you that is to enter that which you have described as representing Mr. Gaynor and I want to see what you thought you were representing when you understood that. That was why I asked you. A. That is all right. The attitude I thought I was representing was the attitude clearly expressed in the statement I gave you this morning which was that the subway question was in a state of chaos. The B. R. T. had been given a good many of the lines but the settlement was not satisfactory, in my judgment, to the people of the city. It was open. It was then to be decided what would be done and a reopening of the question was suggested. After the conversation we had on December 1, 1911, I assumed we were opening up entirely new. What has passed, let it pass.

Q. We can't let it pass, because in one view the mayor's position was changing like a weather cock; in the other view it might be thought that his varying attitudes were but part of some plan that he had in his mind which you intimated when you said he represented interested friends. Now, here in May, 1911, Col. Williams was writing to Mr. Morrissey that the Interborough Company had an office in the City Hall. I think that was practically his expression. In July, 1911, in this well-known letter, the mayor ends it by saying, "I have too long written and spoken against such damnable rascality to now turn about and ally myself as Mayor of this great and intelligent city. I shall go out of office without putting that stain on my name." Now, in an undertaking to be related with him at all, whether as representing him or he representing you, whether to be allied in any way at all with a man whose position was so changeable and so open to

the insinuations of your own letter of August 8th, that is the question that I am trying to discuss in putting these suggestions to you. May we assume that from the time that you undertook or permitted yourself to represent the mayor that your positions were substantially in accord? A. I think so, yes. I will be firm about that. I am sure they were. The mayor seemed to be very anxious to get a settlement of the subway question and so was I.

Q. While speaking of this letter of the mayor of July 19th we may as well speak of your letter that was printed in the American. This purports to be a facsimile of the letter which you told us about this morning. Do you recognize it? A. I do. I wrote that letter with my own hand.

Q. Now, I want to call attention a little bit to the chronology of the situation here. The Interborough had presented the proposition dated the 5th day of December, 1910. The terms of that proposition you may refer to a little later on. On January 5, 1911, Mr. Mitchel and Mr. Prendergast wrote a majority report, condemning the proposal of December 5, 1910. Mr. Williams' letter to Morrissey, calling Mayor Gaynor an Interborough ally, was dated May 24, 1911, and Mayor Gaynor's letter, attacking the B. R. T., addressed to Mr. Morrissey also, was dated May 28, 1911. Now, on July 17th, matters had reached such a shape that there was a conference at a mid-day dinner at the Metropolitan, at which were present, according to the newspapers, Mr. Morgan, Mr. Shonts, Mr. Prendergast, President Miller, Davidson, Freedman, Grout and Mr. Loeb. A. I refer to that in my statement. I said I did not recall all. I have mentioned most of those that were there. We didn't get a dinner; it wasn't even a lunch. As I recall, it was one of those occasions that occurred between four and six o'clock in the afternoon and the water flowed like champagne. My recollection is that there wasn't even a crust.

Senator Thompson.—What is that brand that ——

Mr. Moss.—I have forgotten the brand.

Senator Thompson.—We understood that it was an official brand.

Mr. Moss.—The point of the thing is that the newspapers commented on it. I have a clipping here, dated July 18, 1911, re-

ferring to that meeting and saying in the headlines, "Interborough Wins Prendergast's Support but Loses on Vote." The main point I want to call to your mind is that it became a matter of newspaper publicity by July 17th, printed the 18th. A. Then the gentlemen who wrote it really had the gift of prophecy because nothing had been decided upon at that time.

Mr. Moss.— Well, take it as the 18th.

Senator Thompson.— The morning papers?

Mr. Moss.— The morning papers; yes, sir.

But the situation appeared to be that although they had won the support of the comptroller they were losing by one vote. A. Of course I have not attempted to answer that but that must be wrong, Mr. Moss, because if they had won my vote that day they would have had a clear majority of the board of estimate. There would have been ten votes to six, assuming that the mayor was going to vote against it.

Mr. Moss.— That was the line up.

A. That was not the line up. At that time, everybody had supposed up to that date that the mayor was going to support the Interborough offer.

By Mr. Moss:

Q. On July 19th appeared in print the Gaynor "damnable rascality" letter? A. You will find that on the 20th.

Q. Dated the 19th. A. Letter dated the 19th. Was given out about 8 o'clock of the 19th, printed on the 20th.

Q. You are right about that.

Now, Mr. Bullock, reporter of the Times, volunteered a statement here the other day. He got up there and made a statement. He was called upon to speak and said that the mayor heard what you were going to do and beat you to it.

Senator Thompson.—According to your statement, you heard what the mayor said and beat him to it.

A. I did not. I want to call your attention to this: Several times some papers, in commenting on this question, have said that

the mayor made a statement after he learned I was against it. That is not so. I told you the facts in this statement. It is the first time I have had a chance to give it to the committee.

Q. We didn't mean that you should be denied that chance. A. Hope deferred, you know. This is what actually happened. Don't let's have any misunderstanding about it. I don't want people to think the mayor heard what I was going to do and then did what I was going to do.

Q. I want you to get this in your mind. Bullock's statement was — A. I know what he said and I have talked to him since.

Q. He stated the statement was given out about midnight. A. I have told you the facts about this. I told you I went to the American office about 8.30. While our conference was going on Mr. Weir came to the door and handed me a statement in which the mayor denounced the last proposition of the Interborough company and stated he would not support it. It was after I prepared a statement which appeared in the New York American the following morning in which I also said I would vote against the Interborough offer. That is what actually happened.

Q. Let me go over this. Did Reporter John Weir, when he saw you, ask you, "Have you gone over to the Interborough people?" and did you decline to answer that? A. I have not the slightest recollection of Mr. Weir saying anything of the kind. In the first place, if Mr. Weir had been in to see me two or three times on Monday, probably on Wednesday. I remember very distinctly Mr. Bullock came in on Wednesday. I remember meeting him in the City Hall, and standing there and talking about this for some time. He reminded me of this the other day and I spoke to him about this statement to your Committee.

Q. When you saw Mr. Merrill did he ask you several times the same question, "Have you gone over to the Interborough people?" and did you evade a direct answer to that question? A. No. I haven't any recollection of Mr. Merrill asking me such a question, and I think I would have resented it if he had done so.

Q. Did you resent it? A. I have no recollection.

Q. Did Mr. Merrill say that it was apparent in substance that there was great influence behind the Interborough proposition? A. I don't remember him saying it. He may have said something like that.

Q. Did Mr. Merrill, in his talk to you, refer to Mr. Jerome?
A. No, he did not; but Mr. Shearn did.

Q. Mr. Shearn and Mr. Merrill together, at this time? A. No, no. In fact, talking about Jerome was a favorite pastime of mine.

Q. The question that I asked you concerning Mr. Merrill, did you make any such statement as I asked you to Mr. Shearn? A. About what?

Q. About that great influence. A. No. Absolutely not, Mr. Moss.

Q. Did these gentlemen or either of them argue with you to the effect that if you went back upon what they declared was your pre-election position you would lose caste and fall from grace?
A. From whose grace?

Q. Words to that effect. I can't say whose grace. A. Now, if you will put your question —

Q. Mr. Prendergast, I am not asking you questions manufactured out of my brain; I am asking — A. They do very little credit to anybody.

Q. When I receive suggestions or statement of facts, I am bound to ask questions, and I want you to know that they are not questions manufactured in my mind. They are questions that have been put in my hands. A. If I did such a thing I would fall from grace?

Q. Is it true or isn't it true that you said something like that?
A. No.

Q. All right. That you said it or that it was said to you. A. Exactly. No.

Q. Is it true that in a state of nervousness, with your hand shaking, you reached for a paper in the office and wrote this statement? A. Mr. Moss, I presume I am subject to fits of nervousness, as all other men are. Those who know me best know, however, that when I am engaged in serious business my hand is usually very firm.

Q. Did you take — A. And that there is nothing the matter with my tongue, either.

Q. I never found anything the matter with that. A. Now, of course, if I wanted to get angry over that question, I would, but it isn't worth while. I must say I think that question is a decid-

edly silly question — whether with hand shaking I reached over to take the paper with all the dramatics that accompanied —

Q. — A. Mr. Moss, please keep quiet.

Q. I object to your shaking your hands in a way that I never could simulate in putting it up to you. A. I am putting it exactly where it belongs. Will you keep quiet?

Q. I won't. I object to your putting dramatics in this case and assigning them to me. Yours were the hands that were shaking. A. I was trying to give you a representation of the dramatics as they are supposed to be enacted in the American office, when almost anybody doesn't matter whether the question is one of subway or murder or petty larceny, he always comes forward with hand shaking and trembling lip and stammering tongue and tells in anguished accents just the way Mr. Hearst wants it told. Now, let's cut out the nonsense.

Q. It was very serious until you began to wobble your hands, and I declare you scared me. A. I haven't commenced to scare you yet, Mr. Moss.

Q. You can't laugh it out, Mr. Prendergast. We might as well get down to business. A. Do I understand that counsel wants to prove that my hand trembled? The answer is *no*.

Q. I heard it. When you reached over to the stationery box on Mr. Hearst's desk you did that? A. I didn't know I was in Mr. Hearst's office; I thought I was in the office of L. J. O'Reilly.

Q. Do you recollect a large, flat desk? A. In my mind's eye I see the moon peering through the window.

Q. No, you don't. And you say, "I will give you my pledge I will vote for the Interborough proposition." A. No, I don't.

Q. I will read this into the evidence. "The proposition of the Interborough company, issued to-day, is not satisfactory. I have made an earnest effort —"

Senator Thompson.—What you are reading now is the written statement by the witness?

Mr. Moss.—It is on paper headed in print "New York American." "The proposition of the Interborough Company, issued to-day, is not satisfactory. I have made an earnest effort to convince myself that the terms discussed during the last few

days are in the city's interest but the action of that company to-day, as shown in the first offer they made, and which they have not materially improved in their second letter, indicate the futility of getting them to deal in a frank manner.

My position on this entire question has never changed, and while I would have preferred, for the sake of competition, to have both companies represented in the division of our enlarged transit system, I believe it will be best for the city to award a contract quickly to the Brooklyn Rapid Transit Company, and also immediately confirm the contracts for the construction of the Lexington avenue line.

This means subway construction at once, and will put the city in a position of independence that no other action will afford. I will vote accordingly in the board of estimate to-morrow.

(Signed) WILLIAM A. PRENDERGAST,
Comptroller."

Now, it may be that this is written better than the comptroller usually writes. One of the signs of greatness is bad handwriting but it is so full of interlineations and alterations that I will leave it to the Chairman whether a facsimile ought to be irregular.

Senator Thompson.—Can you put this original into the record?

A. Have a photograph made of it.

Mr. Moss.—We will have another photograph.

While you were at the American office did you see there any other members of the city government? A. No, not while I was there. I think after I had written that statement I telephoned to Mr. Mitchel, who was on his way down here. I wouldn't want to swear that he got there before I left, but my recollection is that he did not. I don't believe he did; he may have. But he was going to be there anyway that night, I learned from Mr. Shearn and Mr. Merrill but I phoned him at his house.

Q. Had you any knowledge whether you were in the place where you were writing this letter Mr. Mitchel and Mr. McAneny were also on the premises, in the outer office? A. No, not the slightest. I don't see how Mr. McAneny could have been because

I telephoned him at his house later on and he told me he would be at the house all night, all evening, rather.

Q. Have you in mind the propositions of that offer of December 5, 1910, particularly as to the deductions from the earnings?

A. I don't attempt to carry those things in my mind unless it is absolutely necessary.

Q. This proposition of December 5, 1910, is one to which Mayor Gaynor frequently referred afterwards as being a proposition it was too bad to have lost. A. I think that is so. I mean I think he referred to it.

Q. And one of the reasons that he gave in support of the contract that ultimately was submitted was that it gave more nearly than anything else some of the provisions to the contract proposed. My memorandum indicates that deductions from the profits in that proposal of December 5, 1910, were first maintenance of equipment with allowance for depreciation; second, maintenance of improvement and structure with allowance for depreciation; third, traveling and transportation expenses; fourth, general expenses and administration expense; fifth, taxes; sixth, actual annual cost of carrying cost of equipment, sinking fund, etc.; seventh, interest on city bonds and sinking funds; and if the gross income is not sufficient to meet these in any year the Interborough to bear same, and not the cumulative. If there is a deficit in the city proceeds, it shall be accumulative. The first five years' entire profit to go to the city and afterward to be divided evenly. The idea of the preferential in favor of the company including the preferential for earnings, sinking funds and interest, cumulative in advance of any city preferentials had not come into the negotiations and there was the provision for the first five years of gross profits to go to the city. A division of the profits wouldn't have been burdened with these preferentials. Now, that was the condition of affairs when you and Mr. Mitchel made your majority report dated January 5, 1911. Do you believe that the contract executed in March, 1913, was better than that proposition? A. Yes.

Q. In what way? A. In the first place, I think the one broad ground upon which it could be said to be better from the city's point of view is that under the present contract the existing rail-

roads and the new railroad wouldn't be pooled. That was not the idea, at all in the proposed offer of December 5, 1910, and as I read to you this morning in a communication with Mr. Mitchel sent to Mr. McAneny about a month after we had reported on the December 5th offer, we said in any negotiations we wanted it understood for the record, any negotiations with the Interborough people the question of the pooling of all the receipts of all the lines, new and old, would be a condition precedent to making any contract with them. We regarded that as one of the reasons why the December 5th offer should not be taken. In other words, when they proposed to determine the new system by the number of tickets deposited in the boxes by the new system and we felt that if any arrangements were made it should be on the general pool basis.

Q. But under the proposition of December, 1910, there were no preferentials. A. There wouldn't have to be. Under the December 5th offer of 1910 the Interborough would have gone along, as Mr. Mitchel and I figured it, earning their old profit on the old part of the system and they would be paying, as I told you this morning, a very much greater profit on the old system than we have allowed them under this contract of six million three hundred thirty-five thousand dollars.

Q. Did you make any calculation to determine that difference? A. We would not entertain that offer on the basis of counting the tickets dropped into the boxes.

Q. It would be in excess of the profit? A. The only benefit derived from pooling. All calculations at that time indicated that if we accepted this offer the Interborough would go along earning its prospective profits based upon the earnings at that time of the old system and that, according to the manner in which we suggested determining the receipts of the new system the city would never be able to get anything out of it at all and it would probably no more than pay the regular running charges of the new system. That was our general view of it and I might say to you that in the report of the Transit Company, of which Mr. McAneny is chairman, June 30, 1911, this question of how to determine the receipts was one to which there was a good deal of difference of opinion and they abandoned the suggestion and

finally came to the proposition of pooling the receipts of the entire system, as we decided to do. That was not an Interborough proposition; it was the city.

Mr. Schuster.—The amount of that preferential barely represented the average income. Did you know at the time whether there were any expectations that that amount would be augmented?

A. We certainly did. We not only calculated it would be augmented, but the figures for every fiscal year since that time prove that it has been augmented.

Senator Thompson.—That is all an assumption that the present subway will carry just as many people after the extension as they do now.

Mr. Moss.—In what way are the formulated contracts any improvement over the contract of December 5, 1910?

Senator Thompson.—If the city had built the other side of this "H" they would have put the Interborough out of business.

A. I don't know what they testified. I don't think Mr. Shonts meant that they would be put out of business.

Senator Thompson.—That is the way he felt when he was before the Committee.

A. I repeat I don't think he intended to convey that impression.

Mr. Moss.—Did you take an active part in preparing this report of January, 1911?

A. That was prepared by Mr. Mitchel. I know he had assistance in the preparation. After he had prepared his first draft I went over it very carefully and made some suggestions about it. Then it went through another revision. I think it really went through a third before we took it to Mayor Gaynor.

Mr. Moss.—I have here your original letter to the mayor, January 4, 1911. "Dear Mayor: Mr. Mitchel and I have been very much delayed in preparing our report upon the subway question. I thought I had better let you know about this at once so that you need not defer the preparation of your report. Our report will set forth the view expressed to you yesterday and I don't

see that there is anything to be gained by your having a copy of it, as you know the general ground we will take and will therefore be in position to set forth your own opinions. Believe me, sincerely yours."

Is there any other reason which you will give for a statement that the formulated contract is an improvement over that of December 5, 1910?

A. I could take the nine reasons I gave you in my statement this morning.

Q. And the statement is as full as you can make it? A. I think it is, without going into the matter in very great detail, which I don't think necessary.

Q. Don't you think the absence of a preferential against the city in your proposition of December 5, 1910 was a very important provision? A. My answer to that would have to be: The preferential was not absent. It was like the travelling salesman's overcoat, it was in the bill but you couldn't see it.

Q. Where was it? A. It was in the proposition that the receipts of the new system should be determined by the number of tickets dropped into the boxes and the receipts and earnings of that system determined according to the number of tickets, if the business of the old system was to go on just as it had always gone on.

Q. Mr. Prendergast, aren't you thinking of the proposition of 1911? A. Yes.

"The Interborough plan for ascertaining gross revenues from the number of tickets sold or deposited in the boxes at the stations along the extensions and for apportioning non-separable operating expenses on the basis of car miles, is calculated to work great injustice to the city."

This is from our report of January, 1911, discussing the Interborough's offer, on page 20.

Senator Thompson.—In relation to the third track?

A. No.

Mr. Moss.—I can't see anywhere in the proposition of December 5, 1910, the exclusion of the profits of the old line.

A. Will you let me have it, Mr. Moss?

By Mr. Moss:

Q. Yes. A. "The gross operating revenue of the new extensions shall be ascertained from the number of tickets sold at the stations along the new extensions or if deemed advisable by either the city or the company, from the number of tickets dropped in the boxes on the new extensions."

Q. There is nothing there but protection to the city. I don't see a separation of the old line and the new.

Senator Thompson.—You simply take the tickets on the extensions; that is all. The tickets at the present stations were going to the Interborough.

A. It would be run practically as two railroads. But on the question of regulating the profits, of course you will have to have a new accounting system. There is no doubt about that.

Q. What becomes of the income from the old lines? A. Well, I hate to say it in the presence of the Interborough, but they were going to take it. That is the story.

Mr. Schuster.—Well ——

A. Don't you remember, Mr. Moss, this little incident I read to you this morning, "That it was apparently (and I say surely in my own case) not the intention of Mr. Mitchel and myself to disqualify the Interborough from ever making another contract with the city is shown by correspondence between us and Mr. McAneny under date of February 4, 1911, addressed to Mr. McAneny as chairman of the conference committee. With this letter we submitted a communication we had sent to Mr. Willcox as chairman of the Public Service Commission in which we called attention to what appeared to be an over-estimate of the cost of constructing the system as outlined in the Interborough's offer of December 5, 1910; in concluding our letter to Mr. McAneny, we said:

'In order that there may be no question regarding the record, we also again take the liberty of impressing upon you the fact that in any negotiations which your committee may enter upon with the Interborough, we regard the two questions of the construction of a route which can be phys-

ically severed and independently operated at the end of a ten-year period, and also a general distribution of profits over the entire system consisting of the present subway and such extensions as might be built, as being conditions precedent to any arrangement made with the Interborough.'"

Q. I wish, for the purpose of clearness, to indicate what the extensions were that were to be built. The West side, lower Manhattan and Brooklyn extensions, practically the Seventh avenue line; the East side, upper Manhattan and the Bronx extensions, practically the Lexington avenue extensions, running up into the Bronx. I don't find here any of those expensive and doubtful propositions that have been put into the present contract, I mean doubtful in the sense of the term. A. They are all in the present contract.

Q. All in the present contract? A. And more — a little more.

Q. These lines mentioned in the proposition of December 5, 1910, were lines substantially in established parts of the town? A. Oh, no.

Q. Substantially so, the Seventh avenue route and the Lexington avenue, the best part of Brooklyn and the best part of the Bronx, no Broadway line. A. The Bronx lines were not in established sections.

Q. But they were good. What reasonable probability of a deficit on those lines was mentioned in the proposition of December, 1910? A. I can tell you the probability of a deficit was in the minds of nearly all of the members of the board of estimate and apportionment. My own belief is that if a vote had been taken for the December 5th proposition it would have been beaten by a divided vote — an even vote — that the mayor and president of the boroughs of Bronx, Queens and Richmond would probably have voted for it and Mr. McAneny, Mr. Mitchel and I would have voted against it. So clear were we that this method of determining the profits of the system was not a wise one for the city, I don't think we ever had any two opinions on that subject.

Q. You remember the deficits so far as the company was concerned were not cumulative and so far as the city was concerned they were cumulative. A. Yes; but, Mr. Moss — now, mind you,

I am not characterizing the auditor when I say this, I mean I don't intend to, but it is a very easy thing to make an offer of a deficit being cumulative if the possibility of ever realizing that deficit is very remote and that is the opinion we held at that time, that that was not a wise method of settling with the Interborough Company, that it left them in entire possession of the profits from the old system and that the results of the new system were very uncertain, indeed.

Senator Thompson.— They get it now, don't they? Six million three hundred thirty-five thousand dollars represent the profits of 1910 and 1911 in their old system and it guarantees that profit for four years against any competition.

A. You go too far when you say it is all cumulative against the city.

Q. Isn't it? A. It is true the Interborough was entitled to its preferential and its interest and sinking fund moneys and if there is a deficit which would have to be carried, it is entitled to interest on that deficit and entitled to interest upon the interest and I think that events will prove and calculations certainly do, that those deficits will be removed within a reasonable time and there will be no lasting differences. I know there will not be so far as the Interborough is concerned, nor the city either.

I don't know that you have any opinion that would disprove what I say. I make this statement advisedly, now. When I say advisedly, using the calculation that men have to use in a demonstration of that kind, because there is nobody on earth that knows whether the carrying capacity or the number of persons carried by the Interborough in fifteen years will be seven hundred ninety millions of people a year. We don't know that; we can only take the best statistics we can find, but taking that I want to say to you, Mr. Moss, that during the life of that contract the Interborough will be able to get back all the money, the deficits, during the first eight or ten years of operation, all the interest upon those deficits, all the interest upon that interest; that the city will be able to get its 6 per cent and all the interest upon the deficits and all the interest upon the interest paid on those deficits, and in addition to that, it will get back a good ten millions of dollars of the 25 per cent which, of course, is profit.

Q. When will that happen? A. That will happen before the contract is ended.

Q. Before forty-nine years? A. Surely. Don't you think it is a pretty good proposition for the city of New York, which wants transit and hasn't got money enough of its own to spare, to invite the railroads to join with them and then be able to have a subway system that will be worth three hundred thirty millions of dollars when it is finished and during the life of that contract every dollar will be repaid and every dollar of interest will be repaid. There will be some profits acquired during the term and at the end of the forty-nine years everything has been paid up and the city owns not only the subway for which it has itself paid but will own all the subways for which the roads have paid. I think that is a pretty good proposition.

Senator Thompson.— If it doesn't become obsolete.

A. Neither you nor I will be here when the Brooklyn Bridge will probably be demolished. The city gets no revenue from those three bridges. They cost twenty millions and twenty-two millions and fourteen millions to erect. They are used by the people, the city acquired no revenue from them. Until they are paid for we get nothing out of them at all.

Senator Thompson.— I don't believe there has been any sort of transportation facility that up to to-day have lasted forty-nine years without becoming obsolete. Take the canal. We spent a lot of money on it. Then we got railroads and trolley roads. Right now surface railroads and interurban roads even, are scared to death that the jitney buses are going to put them out of business. Isn't it entirely possible that in forty-nine years transportation with gasoline carriages on the surface of the street will take care of the city of New York and render these subways obsolete because of the lack of ability to properly ventilate them? If that happens in forty-nine years the city loses everything.

A. I can't speak as a transportation expert nor as a prophet, Mr. Thompson, but I can say that within the next thirty or forty years the city of New York will not be able to accommodate jitney buses or gasoline machines upon the surface of its streets. I don't believe (but my opinion is not worth anything in a case

of this kind) that if this city continues to grow as it has been growing, that the subway facilities that we have to-day will be sufficient to take care of the traffic of the city fifteen, twenty, twenty-five, thirty and forty years from now and these are but an element of our transit facilities. Whether they are going to pay out, or rather whether they will continue to pay for all time, is something that no man can tell, but when you are engaging in a great municipal enterprise involving the use of millions of dollars worth of money you can only use the statistics that you have at the present time. The people of this city, if we said, "No, we are not going to build subways; we are not going to extend the system because it would cost too much money and the possibility of the system lasting as long as it would have to last in order to realize everything upon the investment is too remote,"—if we said anything like that the people of this city would rise up and say, "We will find out some way to do it if our public officials are not providing for us."

Senator Thompson.—But the city talks about what they are going to get in forty-nine years as though it were going to happen next week.

A. But let me say to you, forty-nine years is not a very long term to us in connection with an enterprise involving as much money as this does. Now, you talked about your canals. You state first we had the canal and then we had the railroad; left the canal entirely. We had the canal and then had the railroads, and then went back to the canal. But we are not hearing anything about that.

Senator Thompson.—It is a fool proposition because it don't get anybody anything.

A. The people of this city think that the canal is a very valuable proposition for them. The people of Buffalo think it is a very valuable proposition for them. The people want these things.

Senator Thompson.—The people won't vote that way.

A. The people of this city wanted new subways. As some commentators said, the preferential, or rather the fact that the city is getting the interest in sinking fund after the railroad had re-

ceived the money, is the nature of a second mortgage, and I think the answer to that is it is a second mortgage. No one who has any common sense would dispute it. It is a second mortgage, but you are in this position: You want — the city needs the money to do this work. It don't do it all by itself unless it simply abandons everything else that it should do as a municipal corporation. Now, needing the money it has got to take it in the most advantageous way that it can get it, putting it very bluntly. The Public Service Commission advertised in 1910 for bids to construct, equip and maintain the subways. Did it get any bidders? Not one. During Mr. McAdoo's work here he offered to operate a subway which ran through wonderful, rich territory and he offered to operate it and to accept fifty million dollars to equip and operate it. But that fifty million dollars was also to include the cost of carrying the Hudson and Manhattan Railroad from Thirty-third or Thirty-fourth street — I think it is about eight to ten million dollars. Only forty millions was to be put into this railroad that he was willing to operate. That is the only offer of any kind that came forward and that offer was not accepted. I don't believe that upon final analysis it would have received a vote in the board of estimate or in the Public Service Commission, for it overlooked entirely the outlying districts which were the extensions crying for transit. If it is a second mortgage, let's call it a second mortgage, but let's understand that when you want money you have got to get it on the best terms you can get it. If anybody was willing to construct and equip and maintain a system, they know very well they could have had a contract. We advertised for them and didn't get a bid, advertised in the fall of 1910. Not a single bid, and I say again it does not matter, we will cast aside the idea of advertising for it, from 1910. We will only take that period. Just right up to March, 1913, this question was before the public. Now, if anybody wanted to make a better offer or thought he could make more money by making a better offer, he would have come along and made the offer. But he didn't.

Mr. Moss.— But Mr. Morgan intimated that there was not any use.

A. The city paid for the construction; the company provided the equipment.

Senator Thompson.—The city paid for all of it?

A. It had to at that time. I am not going to —

Senator Thompson.—You didn't understand my question.

A. Of course we were ready to rent another one just like that if we had the money to construct it. We would be delighted to on that basis. In the first place, we didn't have any money —

Senator Thompson.—You say you advertised for them?

A. We did. We advertised for bids to construct, equip and operate. We didn't get a bid.

Senator Thompson.—A contract to furnish all the money. That is not like contract \$1 and \$2, and yet they have —

A. Contract \$1 and \$2 — or rather contract \$1 was started at a time when people didn't know a great deal about subway building and furthermore money was much cheaper then than it has been since, very much cheaper, very much easier to get, and the people who took that contract were regarded at the time as having done a rather hazardous thing.

Mr. Moss.—But their hazard turned out to be a very good one and that was a part of the knowledge of 1910, 1911, and 1912. I can understand very well how people might take that risk if the situation was what Mr. Morgan gave us to understand. They could go on fighting out their terms and making them stiffer and stiffer.

A. I don't know how Mr. Morgan testified but I'd like to have him tell me that that is just what he said and then I know what my answer would be.

During all this interval of nearly three years, why didn't some capitalist come along and say, "This subway system has been a wonderful profitable enterprise. We want some of that ourselves. If the city will build the Triborough route we will agree to operate the cars."

Mr. Moss.—There comes in a proposition from the Interborough to be financed by J. P. Morgan & Company, who were the

recognized financial backers of that Interborough proposition. When the B. R. T. proposition comes in it is backed by Kuhn-Loeb & Company, who are associates and friends of J. P. Morgan & Company. The latter have been tied up with Ryan and Belmont. What capitalist is going to come in here and meet a situation like that? Can he make up a syndicate? Can he take the people away from Morgau, or will they stand pat?

A. I am not going to answer that question.

Mr. Moss.—But the next thing to be considered is this: You gentlemen came out in 1910 with a positive declaration of principles upon the question of construction of the subways. They were to be constructed and maintained afterwards, and I suppose the debt limit, as you have indicated in your statement, comes in as an element possibly modifying the situation. I referred, as you state here, to the report of General Tracy finding a debt limit of a hundred million dollars. Evidently my question was not all printed. If my recollection runs right the margin of debt incurring power was fifty-eight million dollars. The next year there was the great increase made by Mr. Gaynor definitely to supply a debt limit for subway purposes and you and Mr. Mitchel, in your report here of January 5, 1911, find a debt margin of one hundred fifty million dollars.

A. We didn't find that. We said there would be an amount of one hundred fifty million available during the period. I think you will find it says that, Mr. Moss.

By Mr. Moss:

Q. Now, what happened to that debt limit? A. Would you like a statement showing exactly what was done with it? I'd be very glad to furnish it to you.

Q. Was it evened up in the Gaynor administration? A. The debt limit has been subject to constant drain every year.

Q. Has there been any program of economy to conserve the debt limit in order to carry out the pre-election pledges? A. From the time Mayor Gaynor went into office and his associates went in there, there has been a very definite plan of economy. I should say so. But not only for subway purposes but for all other pur-

poses; for instance, during the year 1910 we rescinded about twenty-six millions of dollars of existing authorizations.

Q. For subways? A. To save, so that the money would be available for subways and everything else.

Q. You have had to fight right along to save and prevent excessive expenditures, haven't you? A. There has been a struggle to that.

Q. I think you have watched a growth in subway expenditures and have tried to set yourself against it to some extent. A. I tried to set myself against anything I considered unnecessary expenditure.

Q. I think there are a whole lot of claims that have been filed with your office for interference in the Public Service Commission. A. It is very foolish for anybody to do anything of that kind.

Q. They are doing it, aren't they? A. I don't know. This is the first information I have had. I really don't know to what you refer.

Q. Those matters usually take a very long time to adjust, anyway. I know it is only a few years ago that the claims for building the canal were adjudicated. But do you think there was such a need for conserving the debt margin in view, particularly, of subway expenses and of many promises volubly made to the people of New York that such things as Dreamland Park and Rockaway Island, not Rockaway Island, but Rockaway — do you think those indicated a spirit of economy and an effort to conserve the debt margin? A. Why, Mr. Moss, economy is a very elastic word.

Q. Yes, but it is a definite word when you meet the subway situation. It is a definite word if you are trying to conserve a debt margin, a definite word when the city enters into partnership in such a way with a corporation that it is thought to save the comfort of the men, pension systems, etc. A. If your oration —

Q. Never mind about orations. You are the patent orator. You started it; you talked about orations. Just remember, Sir Oracle, you can't have any more privileges upon this stand than Mr. Morgan had, and Mr. Morgan didn't do anything of this kind. A. I don't want any — I don't ask for any privileges at all.

Q. It is very hard for me to get a question in edgewise here.

Senator Thompson.—I want the comptroller to say anything he wants to. I don't know anything about the orations and you can orate all you want to. You can go ahead and answer any questions he asks if you want to, and if you don't want to, all right.

A. Mr. Moss asked me whether, in view of the need of conserving the city's finances for the purpose of providing adequate transit facilities, I thought that it was reasonable economy or proper economy to indulge in such expenditure as Dreamland Park and Rockaway Park and things of that kind. My answer to that is going to be that this is a wonderful city of over six and a half millions of people at the present time, a city of varied interests. Its people don't all think alike; they don't all walk the same street. They don't all go to the same churches. They don't all enjoy the same pleasures. Their needs must be met, their reasonably justifiable needs. Now, there is one thing that has been urged upon the city for many years, and that is that it should make itself the controller of its ocean front and specially that part of its ocean front which has been used for pleasure purposes, Coney Island. There has been an incessant demand that the city should possess itself of the ocean front and prevent business people from monopolizing it. That, I might say, is a matter of city policy as far as public feeling is concerned. In May, 1911, a fire took place at Dreamland Park and it destroyed the entertainment place. Immediately there was a demand, principally voiced by the press of the city (the Evening World was the leader in the fight), for the city to buy Dreamland Park, and if you refer to the press notices of that time you will find that papers all over the city demanded that the city, now having an opportunity to buy this park, should do it.

For myself, I was opposed to it at first. I found that there was a very strong demand in the public for it. Members of the board of estimate became convinced that it would be a good thing to do if it was going to be done at all. That is the way Dreamland Park came to be acquired. You can't say we are spending our money all for one purpose, needful though it may be, or that we are spending all for another purpose. You have got to distribute your expenditure so that you are going to keep in step with the

life of the city, with every phase of its life. That is the reason Dreamland Park was bought; as a measure of city policy I think it was a good thing. Now, talking about Rockaway —

Q. Please remember, Mr. Prendergast, that if I ask you a question, and I certainly do ask you a few, that they are not questions made out of thin air but questions based upon complaints or communications that have come in and are put in the shape of questions, largely to give you an opportunity to amuse the Committee. A. If that is why I am here, I will have to say good afternoon.

Q. I am simply following your pleasantry. A. Rockaway Park is a stretch of beach at Rockaway. During the McClellan administration the Society for Improving the Condition of the Poor proposed to the city of New York, officially, that it would be very glad indeed to furnish, I think, the sum of one hundred fifty thousand dollars to erect at that location a hospital for the care of children afflicted with tuberculosis. It was their idea that a hospital located there would prove very beneficial for children so afflicted. During that administration there was considerable talk about buying the park so as to take advantage of this offer of the society. I think it was for eighty-four thousand dollars, or a little less. It didn't do so. The reason is obvious. The city administration was engaged in a struggle with the courts trying to prove that it didn't have any borrowing capacity. Just at the very end of the administration this question of buying Rockaway Park, or Rockaway Beach, that part of it, was pressed upon us all the time, and certainly no one will doubt the sincerity of those interests.

Along in 1911 we decided that we would buy the property. I believe in condemnation it has cost one million two hundred fifty thousand dollars. McClellan could have bought it for eight hundred thousand dollars. There is a case where it cost the city a great deal more money because it did not take the property at a time when it could have secured it at a reasonable figure. The condemnation proceedings was contested and went before Judge Benedict for a review, and he gave it a very thorough review, and it was substantially upheld. Since then the hospital has been erected and is in operation. The city only this year contributed

some sixteen or seventeen thousand dollars more to provide balconies around the building.

Q. Can anybody get to that park? A. A great many people get there.

Q. I have heard it said it is very hard to get there and not easy for tuberculosis patients to be taken there. It was a mere form of words following what you had inaugurated, but the point was this, these questions that I have been putting to you along that line are the result of communications that have come to us and which we felt it necessary to put in the form of questions to discharge our duty. It has been suggested that one reason why such affairs as Dreamland Park and Rockaway Park have been put over was just what you suggested about Mr. Gaynor, that he had interested friends. I am not putting that up to you, Mr. Prendergast; I have no intention of doing it, but it has been said that with reference to some of the interests in constructing these parks, and it has been said that it indicated a desire which would be instituted in other directions, to fritter away the debt limit and at the same time to help friends out. Are you willing to express yourself on that? A. My own correspondence is filled with communications of that kind. I tell you that there is hardly a large proposition or option the city engages in that is not immediately challenged by some man or men, once in awhile by a woman, as being profligate or interested or corrupt. Now, there is no question about that at all.

Q. Well, it is charged definitely with regard to Dreamland, and I think also with regard to Rockaway Park, that certain individuals managed to foist their particular property on the city, and in case of the Dreamland Park got so far as to get an outrageous award for it which was upset — I think I have the right proceeding in mind and that objection to it from the standpoint of conserving the city's subway needs would have prevented them from going through. You have expressed yourself fully on those two matters. I will say nothing has come to my attention more frequently or persistently than the statement that the interests that were brought to bear originally to secure the subway privileges systematically and almost scientifically divides the power of the city to build and figure out disappearing debt limits and if neces-

sary push enterprises upon the city in ahead of the subway matters. A. Mr. Moss, nothing would disprove that impression.

Q. You must have had the impression strongly that it was practical for the city to build the subways, that it was practical from what the city had and from what was in prospect. It must have been in Mayor Gaynor's mind when he made that phenomenal increase in valuations, if all those studies and prognostications of power in the city to do this work itself, utterly failed. A. A good many of them have. I was just about to say to you that you could never disprove that impression which you say exists and which I know exists.

Q. Pardon me, Mr. Gaynor had as much to do and you came second in producing that impression. Mayor Gaynor again and again said almost in these words, that it was dishonest people who said the people were not able to do it. You never went quite so far as that but you fell in. A. You could never disprove that impression unless you took a statement of the authorizations of corporate stock that have been made since 1910 and considered them. After you had done that I think you would decide that the city in making the authorizations had not been overgenerous with any particular interest such as pools or parks or new streets or hospitals or police stations or fire houses or bridges or anything else. It has not been overgenerous but on the contrary it has been compelled to be rather parsimonious, and the trouble and the fault found with us to-day by many people is not that we have spent too much money but that we have not spent enough. There is not a week or a day passes that demands are not made upon the board of estimate to do something or other and a complaint that we have failed to be as generous as we should in many directions. That is the exact situation as I know it in the city department.

With all the authorization we have had, with all the things we have had to do —

Q. Mr. Prendergast, if you know that the habit of Mr. Hearst and the American and the Journal is too exaggerate and do the things I said — I shan't repeat it — why did you go into their office and write that statement? A. I went to their office as I told you in my statement this morning on the same principle as

I have gone into other offices, to discuss things with newspaper men.

Q. If that was of such a character as you have represented, if that was their habit, why did you go there? A. Do you think I should have kept away?

Q. I don't know. I am considering now simply the question of policy and propriety. A. I talk to lots of men, I meet lots of people, I do business with them very often, of whose methods I don't entirely approve.

Q. But I understood from your language that they were not exactly trustworthy in their reports of occurrences but were bound to turn them against the individual. A. I said I think——

Q. And referred to the picture of the shaking hand, and so forth. A. I referred to their dramatic method, and at the same time I tell you very frankly——

Q. You had no idea of going back on that thing. You didn't know then that you were going to do it. A. Of course I might. I might change my mind about that or any other public question.

Q. Was it that you wanted to prevent them from indulging in some criticism of you? A. No, because if that had been the case, the New York American would have always held me in subjection.

Q. Don't you think they had you in a position of subjection when you played into their hands? A. I don't consider I played into their hands when I went in there.

Q. You got their support for the time being? A. I had had their opposition before this. We get the support and the opposition right along. That doesn't mean anything.

Q. As comptroller, going into the newspaper office and writing that statement out with your own hands on their stationery, wasn't it for the purpose of placating them and avoiding their hostility? A. No, it was not, Mr. Moss. Please let me say to you that my relations with Mr. Shearn had always been particularly pleasant and friendly. Friendly, do you see?

Now, I knew Mr. Shearn was the counsel for Mr. Hearst, and if Mr. Shearn had phoned to me himself and said, "Mr. Prendergast, I am at the American office and I want to talk to you about

this matter. Would you mind stopping in?" I would have gone in and I would have gone if Mr. Merrill had asked me. I went there. Now, you seem to draw a deduction from the fact that I wrote this letter on their letter head. Would you have me send out and get a piece of note paper? A. I would not have you do anything. It is not for me to do anything.

Senator Thompson.—He takes the position that you have rather brought us to believe that the American is likely to exaggerate or likely to—— A. Likely to! Let us correct it immediately. Certain to exaggerate!

Q. You played right into their hands. A. He published my letters.

Senator Thompson.—You want us to understand that they are unreliable and you say you knew this at this time and he wants to know why you went to this office with a matter as important as that to you personally.

A. I hope no important public officer is too great to visit his fellow citizens when they ask him, and there is no reason why he should not go.

Senator Thompson.—You represent everybody in the city of New York; you are in a representative capacity. If you knew these people would exaggerate or not truthfully record your position, had you a right, representing people as you do, to go there?

A. I said the New York American had a habit of exaggerating, of indulging in dramatics, I might go farther and say hysterics, and that would all be true. Newspapers have their policies and their methods. For a very brief period in the early part of 1910 when the New York American thought I was in combination with Mayor Gaynor, they were very friendly to me. I had been friendly to them; I don't think I am going too far when I say that I saved Mr. Hearst from a very unpleasant situation in 1910. He described it to me once in these words: That when he saw General Becker coming over the hill he realized that he had been saved. I saved him by telling him facts about a story which I could have kept quiet but I did not. Mr. Hearst and I have

been quite friendly. Mr. Merrill I have always esteemed. Now, an invitation from them I did not consider an out of the way thing although the character of the people, its methods, is a matter of general knowledge.

Senator Thompson.—It is now, but was it then?

A. It was then to a great extent.

Mr. Moss.—And you walked into ——

A. I walk into a lot of things but I walk right out again. That is the way I walked into the Progressive party. You can't phase me, Mr. Chairman, and then when I got ready, I walked right out again. I wrote a letter which was very generally acclaimed to be important. And I was quite as welcome in the Republican party as I had ever been. That is what some people can't understand.

Mr. Moss.—There is more joy in heaven over one sinner that repenteth than over the ninety-nine that didn't fall.

A. They get the cake and wine. And a veteran party man like you, Mr. Moss, who has never gone back on their party, especially last fall. (Laughter.)

Mr. Moss.—The party went back on me.

A. That is the same thing; they went back on me in 1913.

Q. And I find they love me just as well. A. Then don't talk about me and the Progressive party.

Mr. Schuster.—Has the city sufficient debt margin that it would have been better for the city to build its own subways with its own money?

A. Mr. Schuster, I want to say this: that I think the question would have had to be decided — there was the possibility of getting competent and trustworthy operators for the subway and I think if the city had had ample and available borrowing margin that there would have been a stronger fight to build the subway but it would have depended on whether we could get an operator.

Q. Is not it a fact that you could have borrowed money sufficient to finance the subway and equip them, and pay less than you will pay as the result of the contract? A. The law had been

liberalized, Mr. Schuster, in 1907 and 1909. The people had approved by referendum an amendment to permit the compensation of self-sustaining dock bonds and rapid transit bonds and under that compensation there has been realized about forty-seven million of rapid transit bonds and sixty-nine million of dock bonds. We had to use fifty millions of that fifty-nine millions of compensation to carry through this plan, so, so far as liberalizing the law is concerned, I think the State has got as far as it could go without indulging in questionable finance. There was a very strong opposition to compensate the rapid transit bonds and the dock bonds.

Senator Thompson.—The city managed to get something over two hundred million dollars from this subway proposition in spite of that. If the railroad had gone up on this side of the river—it would be perfectly possible to lease the railroad if they would take the equipment off their hands at the end of the term. It would be perfectly possible to lease the railroad for ten years, or five.

A. I don't know whether it would or not.

Q. Did you ever try to get anybody on the theory that you take the equipment off their hands at the end of the term? A. I don't believe a contract was advertised on that basis.

Q. There was none advertised; did you ever try? A. I can't say. That would rest with the Public Service Commission. I repeat that the investing public, the financial lessees, knew that there was this opportunity to operate a railroad and no one ever came forward with an offer to do it.

Q. If the financial interest was all centered in one place you could not get any one. A. I refuse to believe that the financial interests of this world—I refer to London, Paris, Berlin, especially—and the entire United States are controlled by any one or two interests. Let me tell you something. London and Paris, particularly, were looking for New York City securities way back in 1907 and 1908. We sold a great many of our short-term securities over there. They were watching the American market. More than nine millions of dollars of American railroad securities are held over there. Millions of dollars are on deposit in England and France. Those people over there knew what

was going on in this country; they were looking for investments. Why didn't they say, "Let us have some of them"? Why didn't the investing public of the United States say, "Let us have some of them"?

Senator Thompson.—I will tell you why they didn't see it if you will let me tell you. If you will let the public of the United States in small enough units, buy, they could take it. If you sell them in small enough quantities, but you sell them so that nobody can take them but banks and syndicates. When they sold out at one hundred dollars apiece ——

A. When did they do that?

Q. I got one when I only had three hundred dollars and I took it. A. You invested in government bonds? I guess you are referring to the gold loan under Mr. Cleveland.

Mr. Moss.—There weren't any subways in sight.

Q. I want you to do this just to inform yourself thoroughly. You take the gold loan under Cleveland. You take the Spanish War loan in 1898. You take all these other popular loans and you take the figures and find out to what extent small investors are after municipal bonds over national bonds. The offering of the individual investors, small investors, for the national bonds at the time of the gold loan under Mr. Cleveland was pitifully small. It was so disappointing that the people who had been advocating it had no reply to make when the figures were submitted showing how few people throughout the United States—I don't want to depend too much on my recollection—that there were only four thousand small subscribers in the whole gold loan of 1894.

I have held here for a half hour longer than I ought to. We will suspend now until to-morrow morning at 10.30. That means, the comptroller says, until 11 o'clock and I presume that is so. But that is so that we can get here at 11 o'clock. If we say eleven we don't get here till a quarter to twelve.

Adjournment.

JUNE 20, 1916

MORNING SESSION.

Meeting convened at 11 o'clock, Senator Towner presiding.

COMPTROLLER PRENDERGAST takes the stand.

Mr. Moss.— I notice that the American pays some attention to your account of the meeting at their office which you testified about yesterday. They say you are in error in this.

“ You state that Mayor Gaynor's letter attacking the subway contract was written before Mr. Prendergast visited the American office and was given out for publication while Mr. Prendergast was in the American office. This is an error. Mayor Gaynor's statement was not made public until two or three hours after Mr. Prendergast had written his pledge in the American office to keep faith in the public and to vote against the subway contract. It was believed in the American office and elsewhere that Mayor Gaynor heard what Comptroller Prendergast had 'gone back' on the Interborough and knowing that the Comptroller's vote would defeat the contract, decided to give out his 'damnable rascality' leeter, denouncing the subway contract to save his own reputation.”

I merely read that to see if your recollection is in any way changed from what you stated.

A. I read that this morning. My answer is that the American is absolutely mistaken in the statement it makes this morning. My recollection of what transpired that night is very clear, not only as to what transpired at the American office but other things during that evening, and I now wish to reaffirm positively, Mr. Chairman, the testimony I gave yesterday regarding what I said transpired on the night of July 19, 1911.

By Mr. Moss: -

Q. I want to refer to a statement made by William R. Willcox, chairman of the Public Service Commission, dated November 16, 1910, which I find in the compilation made by the Interborough Company of the various letters that were written and used in this right along. Page 174 I read a little of this so that the

comptroller will have the bearing of what I want to ask. "Beginning years ago the question of a tri-borough system, that is, a system that is a comprehensive system of rapid transit was considered and decided upon by the rapid transit commission and the then board of estimate and apportionment and has been adhered to with certain changes since then by this Commission and by successive boards of estimate. If, when the city has once been committed to a comprehensive plan, the work is to be suspended whenever new contracts are about to be let, no rapid transit relief will be secured but we must go on for another generation with the frightful congestion of population.

Of the tri-borough system, the Center street loop costing \$9,800,000 is nearly finished; the extensions of the Fourth avenue subway costing \$16,000,000 will be finished within eighteen months. The cost of the bridges does not come within the total cost of the tri-borough and the city cannot expect any revenue from them. The city is committed to these lines of the system; they are admittedly the expensive and least profitable parts. Standing along they represent stub-ends. These subway lines and a large part of the bridges will be useless unless the comprehensive plan of which they are a part—the tri-borough system—shall be completed. As single units they cannot be made to produce adequate income and no board of estimate, rapid transit commission or Public Service Commission ever for a moment looked into the result if the system of which they are a part, should be abandoned. The fundamental question is not, therefore, whether the city shall now begin the tri-borough system but whether, having spent \$25,000,000, it shall spend a further amount to complete the system."

A. What is that, a newspaper statement or a letter to somebody?

Q. This is evidently a newspaper statement—is entitled "Statement by Mr. Willcox" and doesn't seem to be addressed to any particular person. It was furnished by the Interborough Company from its files. A. Yes.

Q. Now, I read from some newspaper editorials, and supposed to be true unless you contradict it, that the construction of the new tri-borough subway to be publicly operated and controlled was actually begun on August 15, 1911. A. Yes.

Q. That is true? A. The building of that extension. That wasn't the tri-borough. The lines that were commenced on August 1, 1911, and by that I presume is meant the breaking of the ground on Lexington avenue about Fifty-ninth or Fifty-eighth street, which was to mark the beginning of the construction work of a line which was to go to the Brooklyn Rapid Transit Co.

Q. Was it understood on the 1st of August that it was to go to the Brooklyn Rapid Transit? A. Oh, yes. Because those contracts were certified as I testified yesterday and you will find in my statement, on the night of July 21, after the board of estimate and apportionment had, subsequent to the rejection of the Interborough offer, decided to give those lines to the Brooklyn Rapid Transit Company.

Q. Well, they were within the route that had been laid out. A. My recollection is they were part of the tri-borough system.

Q. Did the beginning of that work on the 1st of August, 1911, make the position which you and your associates had taken in rejecting the Interborough proposition on the 20th of July? A. Yes, but not the beginning of the tri-borough system; the beginning of the new system which the Brooklyn Rapid Transit or such company organized to operate its subways would take care of.

Q. This is an argument of Mr. Willcox in favor of the tri-borough. Starts out upon the statement that a large part of the expensive construction required for that route had been made — that is, the bridges. A. You say that he says the two bridges are costing altogether some \$47,000,000? \$25,000,000 and \$22,000,000? They had been constructed. They were intended to be integral parts of the tri-borough system, that is true, but he also says that the cost of those bridges was exclusive of the estimated cost of the tri-borough system and at the time Mr. Willcox made that statement on November 16, 1910, not a bit of construction work had been started upon the tri-borough route except so far as the bridges, constructed and finished some years before, could be utilized in that.

Q. They had been built to be utilized in the city system, hadn't they? A. I wouldn't like to answer that with positiveness without reference to the records, because as you know ———

Q. I ask the question because — A. I am not entirely under that impression. My recollection is that at the time those bridges were started of course it was known they would be links in the transit system. Maybe in planning the tri-borough route the rapid transit commission said, "We are going to use the bridges," but they would have been built anyway. There had to be some way found, but understand I am not denying that when they were first planned it may have been as part of a transit system, but I wouldn't want to say anything definitely unless I referred to the records.

Q. It would seem, if I recall the different points in the proceedings that there were constructed the bridges, the Center street loop, Fourth avenue subway and the Lexington avenue subway, so far as it went out in the Bradley contracts all of which were integral parts of what might have been the tri-borough system. A. They would have been used in the tri-borough system, but I have already explained the Bradley construction which started on August 1, 1911, was not part of the tri-borough system.

Q. We have enough on the record to show just what it was. If the city had actually gone ahead with the tri-borough system, it had already spent and committed itself to the expenditures involved in these structures that I have mentioned — A. The bridges?

Q. Yes. A. I am not going to discuss that question because as I say, before I did so I would want to satisfy myself that during the Van Wyck and Low administrations when the bridges were planned and one of them started, that there was a declared intention to construct a tri-borough subway route. Frankly, I don't think that could have been the idea because you know the original subway itself was only started in 1899 and 1900 and I don't think — all the city was trying to do then was financing this new subway.

Q. I will agree with you that even if the tri-borough route was started afterwards that its exponents claimed these as structures within the lines of the tri-borough built by the city and already established as important elements of that route. A. That is quite true.

Q. And isn't it true that all of those routes and structures have gone to the B. R. T.? A. The Interborough will use the

Williamsburg bridge purchased by the B. R. T. and the Manhattan bridge will be —

Q. So all of these bridges that were constructed within the route of the tri-borough system have fallen into the hands or use or practical benefit of the B. R. T.? A. Yes, sir. That is true.

Q. And Broadway, from Fifty-seventh street down also, which would have been a tri-borough system, falls into the B. R. T.'s hands. A. It wouldn't have gone up to Fifty-eighth street; deflected about Fourteenth street.

Q. As far as it would go. A. Yes. You see you might — for your records we ought to say that the B. R. T. line to Fifty-ninth street was a result of the B. R. T.'s proposition of March 1911, and it was something that had been unheard of before. The idea of carrying the new subway line up to Fifty-ninth street being to make a real tri-borough route, starting in Brooklyn. Mr. Grout has testified that he was active during June and July of 1911 and evidently, from the testimony, he was very much interested in the Brooklyn interests although he represented the Interborough. He declined to represent them unless the Brooklyn interests were to be taken care of.

Q. Did you come in contact with Mr. Grout. A. Only as I described in my statement of yesterday.

Q. You never had any meeting with him alone? A. Mr. Grout alone! No. I am pretty sure I never have. The only occasion on which I remember Mr. Grout being in conferences that I took part in was, as I told you, returning from a funeral about the last of June, I think it was, 1911, when he first opened the subject to me, and that was my first intimation that he was interested. Later he was at the Metropolitan Club.

Q. A general conference? A. Yes.

Q. According to the testimony, his activity ended about the end of July. Matters had occurred probably having in mind the matter of July 20th, which convinced me that he was not going to accomplish anything, and we discontinued his work, so that I judge, his testimony shows that with all that had happened in public he had come to the conclusion that the Interborough was not in position where anybody could help it, at the end of July. Now, you were speaking yesterday of the proposition of December 5,

1910, which made no provision for pooling, but in looking at the proposition of July 19, 1911, by the Interborough, I find there was in that proposition a plan for pooling, and it would appear, as the date of that proposition is July 19, 1911, their proposition for pooling which was absolute, in the agreement or proposition of December 5, 1910, had been inserted and your separation or your declaration of your separation from their interests was made just at about the time when their proposition came out which included pooling. Had you that in mind? A. I really don't know what you mean, Mr. Moss, by that.

Q. Well, here is the proposition dated July 19, 1911, by the Interborough company, addressed to William R. Willcox, chairman of the Public Service Commission, and George McAneny, chairman of the special committee, and on page 234 of this volume I find this: "It is understood that when all the new subway lines are equipped and in operation the proceeds from the operation of the existing subway lines and of the new subways allotted to the Interborough will be pooled, and from the total of such gross receipts from operation the following deductions will be made: First, operating expenses, etc., then comes the provision for bridges, including 5 per cent interest and 1 per cent sinking fund and 3 per cent as compensation for pooling, a total of 9 per cent, after which comes the city's preferential of 9 per cent. Then there is this phrase following the provisions for taking out of the earnings "upon the completion of any substantial portion of the new system the receipts of the existing subway shall be pooled therewith and such pooled receipts shall be divided in the manner hereinbefore provided but in the proportion that such new lines will bear to the new system." That is the proposition. A. Yes, sir.

Q. So at the very time that you were declaring that you would not support the Interborough proposition, and whatever was said in that public letter of the American, they had departed from the objectionable feature of the proposition of December 5, 1910, that you discussed yesterday and had announced that they would fall into a pooling arrangement. A. That is true.

Q. I think it modifies some of the things you were discussing yesterday. A. I don't see why.

Q. You said there were nine or ten reasons in your statement that you gave as against the proposition of December 5, 1910. I find on reading, they are against this proposition. A. You asked me specifically about the offer of December 5, 1910.

Q. I asked you wherein the existing contract was better than that provision of December 5, 1910. A. I told you.

Q. You said in that — “to clarify what might have left a wrong impression I have read to you this proposition of July 19, 1911, which contains a pooling proposition fair, square, clear and unequivocal,” and I have called your attention to the fact that a pooling arrangement which you considered to be very much an improvement upon December 5, 1910, proposition — A. Essentially.

Q. Was just put into the Interborough proposition when you retreated from it. A. Yes, because other features were not satisfactory.

Q. Now, that proposition continued before the various boards for some time. A. Which?

Q. That of July, 1911. That proposition remained for some time, didn't it? A. No, it was defeated the day after it was made.

Q. I know, but the substantial proposition. A. Yes, that is true.

Q. And I have here a series of clippings taken from practically all the newspapers, Times and Globe and World and I don't know what all, dated on or about January 31, 1912, when the proposition of the Interborough was being discussed. Did you say, “If this is the Interborough's final word it may as well screw down the lid on the coffin. We have been getting on splendidly without Mr. Shonts and his incursion at this time does not help the matter any”? That is a quotation. I find that phrase repeated again and again in these different clippings. “The Interborough might as well screw the lid down on the coffin” if they were going to stand on that proposition. The summary of the new terms are these: Compensation of 8.76 per cent to the Interborough on old and new capital. Out of this the Interborough to pay 5 per cent interest on its bonds, establish a sinking fund of 1 per cent for the redemption of bonds, and 2.76 per cent is profit.

"The Interborough to turn over the Steinway Tunnel, said to have cost \$11,000,000, for \$3,000,000 to the city. Leases on elevated railroad extensions to run sixty-five instead of eighty-five years. The Interborough to operate the Lexington avenue route from Thirty-fifth street to the Bronx, the sections of the route below that to be abandoned; to operate also the extension from Forty-second street down Seventh avenue; the Steinway tunnel and possibly the Eastern parkway and Lafayette avenue extension in Brooklyn.

"The B. R. T. is to get the Broadway line with a tunnel from Brooklyn; the Centre street, or Bridge, loop, and the Fourth avenue subway, Brooklyn." Now, what was there about this proposition made in January, 1912, which led you to say if it was the Interborough's last word they might as well screw the lid down on the coffin?

A. May I see that, please?

Q. Yes, the terms are down at the bottom of the article. A. Well now, comptroller is *reported* to have said: "If this is the Interborough's final words it may as well as screw down the lid on the coffin." The comptroller referred to the alleged remark of Mr. Shonts to the effect that he would not sign the Interborough's proposals until he had received assurances of favorable action by the city officials, and said he knew Shonts had said this. Mr. Shonts has injected his volubility into the situation, and his assertion that the offer will not be signed unless the city officials agree in advance to accept its terms will not help out one bit."

I imagine when I made that remark about the offer that it referred to Mr. Shonts' statement that he would not make the offer or sign it until the city officials had agreed that they would approve it.

Senator Thompson.—What is the date?

Mr. Moss.—January, 1912. Now here, from the Times "Interboro terms again in disfavor. City officials emphatic in saying the company's memorandum of new agreement won't do." From the Evening Journal, "Subway trust loses; plan city operation." Globe says, "Blames Shonts if the subway deal fails

now. Prendergast says Shonts may as well screw down the coffin lid if new terms are Interborough's last word."

By the Witness:

A. Before I would give you any answer to that I would have to refer to the original paper and also find out the exact circumstances.

By Mr. Moss:

Q. Wait a minute. The terms are mentioned at the bottom of that article and I read them to you. A. Yes, but I can't accept that as being authentic at all. This is not a statement as to terms, not made by any city official.

Q. But it is evident there that the Interborough had dropped from its 9 per cent preferential to its 8.76 per cent and if these articles are right, and they all seem to agree, you were saying that that proposition — if that was their final word, they might just as well screw down the lid on the coffin. A. It is not open to that interpretation at all. Now, may I make my answer? It is not open to that interpretation, because I have told you that I had agreed to 8.76 per cent. In fact, I would say for your records that I took an active part in the discussions at the conferences leading up to the determination to allow 8.76 per cent.

Q. Will you say that you agreed to go in with the Interborough as soon as it named 8.76 per cent? A. There were other questions that were discussed. No doubt about that.

Q. You mean you refused to sign this contract in July, 1911, and did vote for it in May, 1912, on account of the difference between 9 per cent and 8.76 per cent? A. There were other differences in the form of proposition. I don't recall exactly what they all were now. There were improvements made, for instance, the question of the way the contracts should be awarded, I know it was discussed that the Public Service Commission should have control over them. There were other features, there are memorandums of them here, I am very sure. And the difference of 9 per cent and 8.76 per cent, Mr. Chairman, may I say, would have been sufficient justification for —

Senator Thompson.— Was that the reason you gave at the time?

A. I gave no particular reason at the time.

Senator Thompson.—Did you tell the Interborough the trouble was that 9 per cent was too much and 8.76 per cent would do?

A. They also understood 9 per cent was too much. I had always told the Interborough that 9 per cent was too much and that was the principal reason why I had voted against the proposition of July 19, 1911. Everybody knew that.

Q. Did you have a controversy about 9 per cent? A. Of course, we had a great many controversies about it.

Q. Did you ask them to come down to 8.76 per cent? A. We don't talk that way.

Q. I know, but you have the same meaning all the time. I understand it, but I can't talk your language. A. You have been here long enough to have acquired some knowledge of it.

By Mr. Moss:

Q. I hope we shan't get where we were yesterday. A. Just as soon as you like.

Q. No, no. You can't play that burlesque again to-day. We are going to talk business to-day. Don't let's get off.

Senator Thompson.—The proposition is right here —

A. My dear sir, I so thoroughly understand the friendly attitude of this Committee that there is no necessity for your asseverating on the subject. Now, go on.

Senator Thompson.—What I want to know is this: I think and I may be wrong, that if you had said to Mr. Shonts or somebody in authority in July, 1911, "You come down to 8.76 per cent and you can get it through; otherwise you can't." I think they would have done it. Don't you think so? A. I don't know whether they would or not.

By Mr. Moss:

Q. I see that and for all that I can bring to your attention, on the 19th of July, the Interborough proposed a contract which put in what you had been contending for, the pooling provision, and that was met by Mr. Gaynor's "damnable rascality" letter and by your letter published in the American. A. And by my vote in the board of estimate,

Q. And the next that I can see is that in January, about the end of January, 1912, the Interborough was making such propositions as gets into all the newspapers with figures published for the first time of 8.76 per cent and proposals regarding the financing, substantially, as appears as far as I can see in the final contracts and you there declare that if this is the best they can do, it is the same as screwing the lid of their coffin. I want to ask you, Mr. Prendergast, what was there in the final contract that was so much better than the terms discussed there that it led you to vote for the contract? A. I have answered that in the statement I fired at you yesterday.

Q. I don't find it. Is that the best you can answer? A. That is the only answer I am going to give.

Q. I ask you if that is the best you can give. If you say it is the only one you are going to give that is leaving something possibly unsaid. If you want to leave the record in that way I am satisfied, but I — A. I am perfectly satisfied with the record.

Q. I want the record to show that I have called your attention to the gap. I am not conscious this morning, Mr. Prendergast, of having yielded to anything personal to provoke your discomfort or displeasure. If you are going to work those into the case, the atmosphere must be of your own creation.

Senator Thompson.— I want to put this on the record. Sometimes pleasantries, when they go on the record, are mistaken. The suggestion was made yesterday in reference to some matters about Whitman and Governor of the State. I don't want any question about that. This investigation has been carried on to make an investigation, no matter where it lead or how it lead, and it won't make any difference to the chairman of this committee who got in the way of it. There would probably be a contact of some kind; there never has been any personal controversies so far and I want to refer back to the minutes of the committee, taken on February 11, 1916 over a check by Mr. Quigg. That day the chairman had this to say: "I am glad that check and those letters were published. It simply shows, and shows something else, and nothing beyond the fact that men in such business can spend their idle time in framing up a public official. That is all it shows, and there is not a single thing about it that shows that a public official had the

slightest thing to do with it. They can write their letters among themselves and draw their checks to each other, and that does not affect the person mentioned in an official capacity, and I want the public to understand that, so that this matter, as I see it, and I think the committee sees it, is not a reflection upon the governor of this State or any other public official. * * * The letters themselves and the check itself are interesting, and a matter entirely within the scope of the inquiry of this committee, as affecting the men like the drawers of the check and the recipient of the check, and nothing further."

This is the idea the chairman of the committee had at the time and as near as private or public or any acrimony has ever existed between the governor of the State and this chairman.

Mr. Moss.—Now, I refer to an article dated January 24, 1912, and it speaks — this is from the American and you have characterized the style of the American, so don't think I am reading to you from the Times or the Evening Post — "Mayor Gaynor received last night," that would be January 23, 1912, "from the Interborough's attorneys a draft of the secret agreement Comptroller Prendergast and President McAneny agreed to put through the Board of Estimate. The city has surrendered to the subway operating company. Mayor Gaynor's long advocacy of the Interborough has won over his associates. Terms of the city's surrender were brought to the mayor's office by Andrew Freedman, one of the directors of the Interborough. Mayor Gaynor refused to make the terms public." This letter is about a week ahead of those that I showed you. He took them home with him. "When questioned he suggested that either McAneny or Prendergast might make them public." Evidently they were made public by some one before these articles of January 31 were printed.

Now, had you any knowledge or information of Andrew Freedman having taken any proposals of the Interborough to the mayor?

A. Not the slightest.

Q. Have you any knowledge of any tentative agreement formulated in January, 1912? A. No.

Q. With your knowledge and your co-operation is it possible that you may have participated in some such tentative framing of an agreement and not remember it now? A. I don't think so, but

I think what did happen is this that the results of the conferences up to that time were probably committed to paper by some one and that this memo. was treated as a proposition or something tantamount to a proposition.

Q. Did that contain the 8.76%? A. It probably would, because my recollection is that the question of allowing 8.76% was discussed very late in December of 1911 or along at New Year time.

Q. Evidently the American, in its judgment on the 24th of January of your attitude, was changed because on the 31st you are being quoted as declaring of this proposition "if it is the last word it may just as well screw down the lid on the coffin." A. I will tell you why the American could have had that information. I met Mr. Shearn at luncheon and outlined to him the agreement that would probably be made and told him it would be made on the basis of 8.76%. That was the conversation we held and he knew it and he didn't use it as a newspaper story but it could have been in possession of that information.

Q. Did you tell him it was going through? A. I told him I expected to vote for it.

Q. Was this before you were quoted as saying it would be the coffin lid? A. Yes. That is why I am of the opinion that when I made this reference to the coffin lid which I am not disputing because it appears, although it may be or may not be accurate, I don't dispute that, it must have had reference to something else that Mr. Shonts had said or tried to do because I can't see why I should have made so vicious a remark because of the outline of the proposition which we had agreed to.

Q. That is interesting and I want nothing to be incorrect in the record. I want to thoroughly show what you mean to say. If I understand your testimony up to this point. You have told Mr. Shearn that the thing was going through on the basis of 8.76 per cent and according to these clippings which agree of January 31, you said that that proposition, if it was their last work was the nail in their coffin, and it would appear that your statement of the 31st was antagonistic to your statement of the 24th, but the explanation that you make may account for it. At any rate that would be the explanation. A. That is the explanation that I would make, yes.

Q. Did you know that your stand against the proposition of July, 1911, together with the stand of the mayor and Mr. McAneny — A. Mr. Mitchel.

Q. Mr. Mitchel, yes, was considered to be such a finality that the bankers, the Morgan house, deemed the matter to be closed and as Mr. Morgan has said, drew a line under it and sent in a bill for \$500,000, believing that the whole thing was off? A. I know nothing about it.

Q. Did you know that the bankers had given it up? A. No, sir. Because I never met any of the bankers and conferred with them upon the subject. It was never mentioned between them and me from the Metropolitan Club conference of July 17, 1911, and when negotiations were reopened on the night of November 19, 1911, at a meeting arranged by Vice-President Rae of the Pennsylvania at the Century Club —

Q. You did meet the bankers in general conference, at other dates? A. Surely. They were very —

Q. From the fact that they did not take part in any conferences between those dates, didn't you endeavor and wasn't there talk about this that the Morgans had dropped out? A. I never thought of Morgan in connection with the matter. We had voted on this proposition and it had been defeated. As I stated in my statement there was not a general satisfaction with the way the question had been settled and that was very noticeable, indeed. I was aware of that in part from the attitude of the press, in part from interviews I had with merchants and business men, and the preponderance of opinion was that the question had not been settled right.

Q. Notwithstanding what Mr. Morgan said, I want you to get the slant of my question. It didn't seem to me as though, being away from his office, the Morgan house could really have considered the matter to be closed. I am not taking that position because I find there are evidences throughout the testimony that the Interborough was dealing with Mr. Shonts and he was seeing the mayor and that many things were happening in October and in November prior to the time when Mr. Morgan said a line was drawn under the affair — numerous things were happening to show it was quite alive.

I wonder if you saw this article in the Sun of June 18, 1911, before you went to the American office on the 19th. This is entitled — A. That would be June, not July.

Q. I wonder if you had seen this: "Prendergast quits Mitchel. Thinks Interborough must have a hand in subways." June 18, 1911. This is a month before. A. That would be before the report of the transit committee had been voted on.

Q. Weren't there reasons which may occur to you now why those connected with Mr. Hearst's paper were anxious about your attitude and why they might seek that conference with you? A. No.

Q. Undoubtedly you saw the American on the day following your visit to their office, issue of July 20, 1911, in which your interview was printed.

Senator Thompson.—In the paper of that date they didn't exaggerate so much.

By Mr. Moss:

Q. It may be exaggerated in the headlines "Subway plot fails; interboro hold-up beaten." A. Do I understand you say it is exaggerated?

Q. I haven't said anything. Here is your picture along with Mr. Mitchel, "Prendergast, tired of Interborough trickery, is for B. R. T. contract." The difference is that one man stood out to the end and one man fell by the way; that is the only difference. A. Go right on.

Q. "Gaynor deserts sinking ship. Contract will be rejected. Mitchel and Prendergast win."

Senator Thompson is trying to speak.

Witness.—Do let the Chairman say what he wanted to say, Mr. Moss.

Senator Thompson.—I rather take it that your idea is that Mitchel didn't stand up as good as the record would indicate. Is that your idea? I got it from what you talked about yesterday and to-day.

By the Witness:

A. Mr. Thompson, I can't regulate your ideas.

Senator Thompson.— I got them entirely from you.

A. I have never said anything that indicated I did not believe that in Mr. Mitchel's attitude upon the subway question from its very beginning he had not been actuated by the most upright motives and even at times when I disagreed with him very much I always gave him credit for being sincere and conscientious although I thought he was mistaken.

Mr. Moss.— He is not a lightning change artist.

A. Isn't he? What is a lightning change artist?

Senator Thompson.— From the statement you made yesterday and from your actions I took it that you possibly thought that the mayor was just making a record and not really standing on what he voted.

A. That is what you thought?

Senator Thompson.— From what you said yesterday.

A. That simply confirms my impression of the way you think.

Senator Thompson.— But I am going to ask you to answer my question because it is fair. That was your attitude yesterday.

(Answer is struck off the record.)

Senator Thompson.— What strikes me from what your attitude is is important to me and I want to know whether you intended that yesterday or whether you didn't.

A. I don't intend to pay the slightest attention to your question.

Senator Thompson.— You don't?

A. I don't.

Senator Thompson.— I want to know if that is your answer.

A. I have answered your question.

Senator Thompson.— I want to know if that is your answer.

A. I suggest that you proceed with the business of this Committee.

Senator Thompson.— Perhaps we will. Do you think — do you mean to insinuate that the mayor felt different about these

contracts than his record appears? Now, you can answer that yes or no or you can decline to answer it, whichever way you want to. I want to know what you are going to do about it. Do you decline to answer?

A. I told you before that I didn't intend to pay the slightest attention to that question. It is sufficient for me to know that Mr. Mitchel knows exactly how I feel about his attitude and all his public actions.

Senator Thompson.—Relating to the insinuations made by the witness yesterday that Mr. Mitchel really felt different than the recorded attitude shows —

A. It is distinctly untrue that the witness gave any such impression yesterday.

Senator Thompson.—All right, then, it is all right. You can go ahead. (To Mr. Moss.)

By Mr. Moss:

Q. I will go on. A. Understand, that was not an answer to any question. I was making a statement that it was distinctly untrue that any such insinuation was given yesterday.

Q. Mr. Prendergast, here right close to your picture in this paper are the words, "The hold-up of the city, which all but succeeded, is now as dead as Pharaoh." Now, you wanted to give the impression to Mr. Hearst and Mr. Merrill that you had gone back to your original principles and that you had left the Interborough for good, didn't you? A. No, I didn't do anything of the kind and there is nothing in that letter that gives any such impression. I care for no impressions you say I gave Mr. Merrill any more than I care for the impressions that you and Mr. Thompson and others may acquire as to what I say.

Q. We are not here to listen to what you care or what you don't care, if you are willing to make a record like that. But if I am any judge of witnesses, I see a man whose conscience shows him the unpleasant position he is in and he is trying to carry it off with an appearance of bravery and courage remarkably —

A. I have been in public life too long to pay any attention to remarks of that kind, especially from men like you.

Q. You invite them? A. Never mind whether I invite them or not.

Q. A perfect picture of a man who is trying to get away from the record? A. I get away with it, all right. You bet I do!

Q. And you may get away with this? A. I will, no doubt about that.

Q. You testified yesterday that you didn't know anything about the suit — the taxpayers' suit — brought upon an allegation that the contracts violated the constitution. You knew nothing about it. You knew nothing about the collusive elements in those suits till you heard of it here? A. I did not hear of it here; I heard from Mr. Harkness.

Q. When, A. Last February. That is what I testified.

Q. Well, now, here is the American of Sunday, June 2, 1912, printing the facsimile of your statement. You must have seen that. A. Oh, yes! I remember that.

Q. Printed immediately under that facsimile of your letter is this in large type, "President Shonts shows (First) How he Authorized 'Fake' Suit, (Second) How Interboro owned Prendergast from the Beginning." There is printed here an extract from the testimony of Mr. Shonts in the case of the Continental Securities Company against the Interborough Rapid Transit Company and others in which Mr. Shonts tells the whole story of how the taxpayers' suit was devised by Mr. Nicoll and how it progressed and how the Interborough hoped to pay the bills. Now, this is June 2, 1912, and the chronology of the case shows that it was argued in the Court of Appeals on June 11th and 12th, ten days after this appeared and it was not affirmed until the 29th of June. Now, if, as you say, it is true that you saw this paper and saw this statement of Mr. Shonts' testimony, aren't you mistaken when you say you knew nothing about it until Mr. Harkness mentioned it last February? A. I will stand by my testimony that I remember seeing that issue of June 2 — I remember that, and particularly the letter. That I read everything on the page I can't say and if I had read everything on the page and had read what Mr. Shonts is reported to have said there, I wouldn't say that I had no knowledge of it whatever. The very fact that I say I had no knowledge of those suits and that I sought

information from Mr. Harkness last February about that convinces me that I never had any previous knowledge regarding the collusive nature of those suits.

Q. You certainly made no communication to the Court of Appeals or to anybody in authority connected with the presentation of the case, did you? A. I don't remember that I did.

Senator Thompson.—Are you a lawyer?

A. I am not. My past, at least, is secure.

Senator Thompson.—It is a good deal more profitable to be a financier.

Mr. Moss.—You are worth a good deal more money now than when you started out as comptroller?

A. I am not. I think I have less now than when I started out as comptroller, I am sorry to say. I certainly haven't any more. Now, that you have got to the interesting part of your case, why don't you go right on with it?

Senator Thompson.—Would you be willing to be examined on your finances?

A. Surely, absolutely.

By Mr. Moss:

Q. Now, this facsimile contains some extracts from your pre-election speeches and I want to see if you recall them. During the campaign of 1910, "I should say that the traction question is the most important matter to be considered. The question of building subways in Brooklyn should be taken up immediately. I am not undertaking to say which route should be undertaken first, but a start should be made without delay.

This question not only involves comfort and facility in transportation, but upon its solution depends the proper distribution of population. In order that the settlement of this great question will not be dependent upon the disposition of private capital, it is essential that the city should build and own its own subways. In no other way will it be protected from the selfish whims of those who would speculate in public rights which are the inherent possession of the people.

I heartily subscribe to the principle of municipal construction and control of subways and believe that if outside interests are not willing to undertake the operation of such subways on terms acceptable to the city it will then be necessary for the city itself to assume the task of operation.

If the operation were confined to its legitimate business needs and not used as an adjunct to any political machine, there is no reason why such operation could not be pursued to the great advantage and profit of the city government.

If the same measure of control had been vested in the rapid transit commission that now belongs to the Public Service Commission better contracts would have been made in behalf of the city and with the present holders of subway privileges and the financial embarrassment of these lines would have been prevented."

Following your election in November, you say, "I am for building the tri-borough system with city money." The next quotation is, "Mr. Shonts called me on the telephone on Friday and asked when he could see me. I told him he could see me at my office during business hours any day." On December 30, 1910, "I am certain it was not the opinion of the city, when they voted in favor of that amendment, that they were making this for the purpose of contributing for the extension of the lines. I am not in favor of contributing any part of the sixty million dollars available for any purpose other than the construction of an independent system. Any extension of that system must be made by the company itself with its own funds. It is earning 17 per cent to-day with a prospect of a further increase to 23 per cent next year and is fully able to make its extensions with its own money." On January 10, 1911, "I weighed carefully all the arguments advanced by those in favor of the Interborough proposal before making up my mind. My decision was based on the reason that overshadows all others, that every benefit conferred by the Interborough can be returned by the building of a subway system."

Did you hear anything that I read which was not in your opinion not a correct report?

A. I think that is all correctly reported and the context of all

those addresses are incorporated in the present dual subway contracts.

Q. Then this — A. That is the answer.

Q. Yes. All right. This meeting of October 14, 1909 — A. The first quotation you read in that meeting — Academy of Music, Brooklyn, a long speech.

Q. "Transit development is the most important to be considered. In order that the settlement of this great subject may not be dependent upon the disposition of private capital, it is essential that the city should build and own its own subways. In no other way will it be protected from the selfish whims of those who would speculate in public rights which are the inherent possession of the people." A. That is the same thing that you read before.

Q. "I heartily subscribe to the principle of municipal construction and control of subways and believe that if outside interests are not willing to undertake the operation of such subways on terms acceptable to the city it will then be necessary for the city itself to assume the task of operation."

Continuing from other memoranda, the address of October 14, 1909, I quote: "The plight of the present surface railroad system in Manhattan proves conclusively that there is need for effective regulation of public utilities. No man who has studied the transit situation will deny that if the same measure of control had been vested in the former rapid transit commission that now belongs to the Public Service Commission, better contracts would have been made and the financial embarrassment of the surface lines prevented. I have no associate, political or otherwise, that would attempt to influence my course as a member of the board of estimate and apportionment. If Mr. Shonts come at all to the next board of estimate he will come hat in hand. He will come once, twice, thrice, always hat in hand. There will be nobody on the next board of estimate who will take orders from Brother Shonts."

A. Is that a newspaper report?

Q. I suppose it is. A. Now, the last part of that I may have said, but I am not so sure. I remember distinctly in that speech making a reference to a dispute between Mr. Hearst and Mr.

Gaynor in which the term, "Would come once, twice, thrice, hat in hand," and somehow or other I think that is taken from some newspaper. I won't say I didn't say it, but you will notice I want to be particular about disputing anything I am not sure of and I have disputed very little of what you read. I had an original copy of that speech. I know I had it last February, but it has been misplaced. I don't care anything about that. May be I said that about Brother Shonts. He did come once, twice, thrice, hat in hand.

Q. While you were campaigning did you pay attention to Mr. Gaynor's addresses? A. I guess I did, sometimes.

Q. Did you take issue with him or did you put yourself in line with them? A. I couldn't have put myself in line with him during my campaign speeches and I recall only one or two speeches that were prepared. I really don't recall any other that was prepared during that campaign.

Q. I am going to read into the record a few extracts from some speeches for the purpose that you may agree or dissent or state whether you did in any speech agree or dissent as to a certain slant that runs through them as to the way money could be raised. Speech of acceptance, October 7, 1909. "The building of the subways by the city does not, in my judgment, depend on the adoption, by the people, of the pending constitutional amendment in respect to the bonds to be included in or excluded from the 10 per cent limit.

The margin of borrowing capacity under present statute is ample, I think, especially when it is considered that every necessary subway will create real estate value far in excess of the cost of this construction, and also that with due diligence we shall probably not expend more than from two to twenty millions of dollars in subway construction, speaking approximately.

I have, therefore, heretofore expressed myself as opposed to the said amendment, fearing that its adoption might tend to extravagance in the city expenditure in other directions. But as many able men who have closely studied the subject and in whose judgment I have full confidence are uncertain whether it may not be necessary to subway construction, I am not disposed to adhere to my opinion against theirs, for more and ample subways we must have."

Speech of October 14, 1909, at Carnegie Hall. "Some of the people have requested that I speak to-night with regard to the railroads and the building of subways. I spoke in the most explicit manner in regard to that in my speech of acceptance, and I could not be more explicit. I intend to speak on that subject in Brooklyn on Saturday night, and I will pass it to-night with a single mark.

During the last six years the building of subways has been entirely held up here through causes and by means and by persons you know as much about over here as I do, and you ought to know a great deal more about. For more than six years not only has nothing been done, but nothing has been even planned. Meanwhile they have connected New Jersey by subway and your population is leaving you and there will be more people over there than on the island of Manhattan in a few years unless you build your subways and keep your people here; and that the city will have to do.

And it will cost the city nothing to do it, but it will be an asset to the city when it is done. There is no subway in sight which will add a decimal to the tax rate of this great city. There has been no subway mentioned which will not forthwith pay for itself and leave a large surplus over.

Every subway built creates real estate values many times the cost of its construction forthwith and continues on forever and ever to increase them. In addition to that the city will have the rentals, the revenues, from them.

Those people who talk about the city being unable to build them, that they will exhaust the credit of the city, will learn before this campaign is over that in place of exhausting the borrowing credit of the city, they will swell the borrowing credit of the city as we build them one after another."

That evidently has in mind the building of sections from time to time as the city has the resources to build them. Now comes the speech at Tammany Hall of October 19, 1909.

A. The interesting thing about that speech was the opening line.

Q. "My friends, we are going to build subways, for the city is going to build three subways. We do not intend that a single

subway or a franchise for it shall be passed over to any of those men who erect your street railways over here to have bonds and stocks piled upon them, sold out to the community at the highest figure and then the road thrown into bankruptcy, the same as your roads are over here to-night, and have been for three years, not a dividend paid on them meanwhile.

* * * * *

If it is to be that I am to ——”

Senator Thompson.— They’ve got a preferential.

Mr. Moss.—(Continues reading.)

“ If it is to be that I am to be mayor of this city I can speak of such things with a voice of authority, and I can tell you that during the next four years we will build the subways for the city and none of these people will so much as get their little finger into it.

The leaders of the convention which nominated me — now they will yell to-morrow in the papers a job and a bargain, not these good gentlemen here, but someone in his editorial chair — the leaders of that convention were so good as to let me write the platform with regard to the subways which was adopted in their convention. I took the greatest care to put in that platform a declaration that in the building of the subways hereafter the contract for the building of the subway should be kept entirely separate and apart from the contract of letting.

During all the time when I saw it done with this subway and after it was completed and while they were leading up to it, it was laying cold in my mind in place of making a contract for building it and putting in that contract a term of years, they should have had one that the city could build it first and then make a clean and fair contract of operation to the highest bidder or whoever would carry for the lowest fare.

* * * * *

But they cry them (city bonds) down in order to prevent these subways from being built. My friends, we have a leeway of \$150,000,000 at the very least, and mark and see if I am not telling you what is the truth. And if we had a leeway of only \$25,000,000 we would still have leeway enough, to build the sub-

ways for the simple reason, my friends, in place of exhausting the credit of the city or being a source of expense to the city, it absolutely increases the credit of the city and adds to the resources of the city."

Next is the Academy of Music, Brooklyn, October 20, 1909. "We are now come to an era when we are going to have other means of transit; we are going to have subways; and, my friends, we are going to build subways and build them immediately, and we are going to build them by the city itself, just as the subway over in Manhattan was built by the city's money although I find a lot of people who think it was built with Belmont's money.

Not a dollar went into the subway in Manhattan except the money of the city of New York — not a dollar. 'They' want to build your subways. Think of it — they who have done this thing. And you do not propose that they shall do it. We have laws passed by which the board of estimate and apportionment, in conjunction with the Public Service Commission, may build them and build them immediately. If the margin of credit of the city was only \$25,000,000 we could go about it forthwith. Why, I suppose, proceeding expeditiously, with your tunnels over here in Flatbush avenue, in Fourth avenue, the one they call the loop and with whatever may be necessary on the other side of the river, we could not spend over \$15,000,000 a year and meanwhile values are growing and there is always a margin to continue the work.

But more than that, my friends, every subway that we build will create a margin for itself. Do you not know that every subway creates forthwith real estate values many times the cost of its construction? In the place of detracting from the credit of the city these subways, when built, will add to the credit of the city. They will keep our population. They will create real estate values. The income from them and the taxation upon the real estate values which they create will be ample to pay the interest account for their construction and a sinking fund to pay the hands when they fall due. Yet we have this thing going on now these six years and nothing done. I do not hesitate to say that during the last six years at least four subways should have been built."

The Democratic platform to which he evidently referred is this:

"We are in favor of the building of the subways necessary to relieve the present congestion of travel.

We are in favor of the building of the subways by the city itself and of the complete separation of such building or of any contract therefor from the leasing of subways for operation after completion.

We pledge the candidates nominated at this convention to the construction of such subways as speedily as possible.

We declare, from experience, that no necessary subway will be a source of expense to the city and cause any increase in the rate of taxation; on the contrary, the increase of taxable values of such a subway will yield in taxes more than the cost of construction and interest thereon. If it be found necessary to permit any subway to be built by private capital, it should be done on the basis of a lease of the subway for the lowest term of years to the builder in return therefor."

Is there anything in those statements to which you take exception in the campaign or which you objected to by any reference?

A. I don't recall that during the campaign of 1909 I discussed Mayor Gaynor's attitude upon the subway question at all.

Q. Now, I want to refer to some paragraphs in your report of January 5, 1911. I am going to put the whole pamphlet in evidence, but a few of these I call to your attention particularly. "Majority Report of the Transit Committee of the Board of Estimate and Apportionment, January 5, 1911, signed by Wm. A. Prendergast, Comptroller, and John Purroy Mitchel, President of the Board of Aldermen."

Senator Thompson.—The comptroller wrote a letter to the newspapers about the offer of March 22, 1910, by means of which letter he rather raised the impression that it did not amount to anything. It said in there that the records never authorized it.

By the Witness:

A. This refers to the definite Interborough proposition of December 5th.

Senator Thompson.—I understand that in two or three days after this letter was published — we found that the board of di-

rectors had authorized it, and when we sent for Mr. Prendergast he came in and said he had not heard of this offer of March 22d, and Mr. Spencer, in this report ——

By the Witness:

A. I did not, Mr. Thompson; let's get it right.

By Mr. Moss:

Q. This report relates to an offer of January 5, 1911. A. One minute, please.

Senator Thompson.— I've got it right here.

Mr. Moss.— “ The majority of the Committee is opposed to the proposition submitted by the Interborough Rapid Transit Company for the following reasons:

“ 1. Because it means the perpetuation and extension under private control of the present subway monopoly which, regardless of its obligations, has persistently exploited the public to satisfy corporate greed.

2. Because all the real benefits in the Interborough plan can be obtained through adherence to the principle of independence.

3. Because the mandate of the people, as expressed in the election of the members of the board, was against monopoly and in favor of city-built and city-controlled subways.

4. Because since that mandate was expressed at the polls there has been no change in conditions to justify the violation of the principles then adopted.

5. Because competition in quality and extent of service which can be guaranteed only by municipally owned and controlled subways is absolutely essential to the future development of the city.

6. Because the Interborough Company has proved itself unworthy of the public trust by showing continued bad faith in its negotiations with the Public Service Commission, by its utter contempt of reasonable regulations, and in many other ways, even going so far as to offer flagrant defiance to the Commission on the day of the preparation of this report.

7. Because added distrust of the Interborough Company is inspired by the terms of the present offer, which discloses the purpose of the company to place all the burden and the risks of rapid transit extension upon the city and obtain for itself all the benefits.

We recommend that the board of estimate and apportionment formally commit itself to the immediate construction of an independent system for the following reasons:

1. For the seven reasons already given for the rejection of the Interborough proposition.

2. Because the city has available funds to the amount of \$150,000,000, which is much more than is needed for the independent route.

3. Because the routing of the independent system is such that it will carry to their destinations in the various parts of the city at a five-cent fare practically all of the traveling public who will avail themselves of its service.

4. Because an independent subway system is the only comprehensive one which gives the public the use of the Center street loop and the two bridges, representing already an expenditure of \$70,000,000 of public money which otherwise would pass into the control of the Brooklyn Rapid Transit Company which now monopolizes the territory of Brooklyn and a part of Queens.

5. Because when the independent system is constructed economic necessity will compel the Interborough Rapid Transit Company to build extensions to the present system at its own expense, the facts demonstrating that this can now be profitably done.

6. Because the adoption of the independent system eliminates from the subway discussion the third tracking and extension of the elevated railroads, unfairly and improperly included in this discussion by the Interborough Company and leaves this distinctly separate proposition to stand on its own merits.

7. Because the independent system will give quick relief to congested sections of the city and at the same time will force the prompt construction of the natural and logical extensions of the Interborough system with its own funds.

8. Because the history of rapid transit discussion for the past three years shows clearly the general acceptance by the public, the press, and the Public Service Commission of an independent route as the best solution of the subway problem in this city."

Now, there are fifteen reasons given in introduction for the position then taken by the majority of the Committee. Several of these relate to the attitude and conduct of the Interborough Railroad. In your opinion had the objections which were stated at that time been eliminated? A. Almost entirely.

Q. Has the suggestion of monopoly been eliminated? A. Absolutely, through the recapture provisions of the contract.

Q. I ask you that because in their testimony heretofore offered the experts disagree. A. Experts always disagree.

Q. Not always. A. Nearly always.

Q. These aren't paid experts. A. Are you referring to experts before your Committee?

Q. No, I am referring to experts on the situation who have expressed —— A. Who are they?

Q. Mr. Maltbie, Mr. Mitchel, for instance. I call them experts and I speak of them as unpaid, simply meaning to say that they are public officials of a high standard. A. With all due respect to my honored friend the mayor, I don't think he is any more of an expert than I; I don't believe Mr. Maltbie is.

Q. I want you to express your opinion on this subject because other testimony will be in the record. A. I have done so.

Q. All you want to? A. I don't know as I have said all I want to.

Senator Thompson.— Do you think the recapture provision provides sufficient protection against monopoly?

A. I do.

Senator Thompson.— Of course, wherever there is any recapture it is in the contract.

A. Surely; have you read the contract?

By Mr. Moss:

Q. Had the objections which you specified to the Interborough Company as such been eliminated at the time the contract was voted in 1912? A. Oh, yes. I am sure they had.

Q. Let's be accurate about that, if you can. This criticism is dated January 5, 1911. The contract was approved in the early part of 1912. A. It was approved on May 24, 1912, nearly the middle of the year.

Senator Thompson.—He disagrees with you about the word "early."

By Mr. Moss:

Q. Do you mean to testify that in the course of the year and a little more, all of these objections to the history of the Interborough had been eliminated? A. I do. Yes.

Mr. Moss.—On page 17, your committee having discussed the tri-borough proposition, explained it and approved it, goes on in this way: "Your Committee will now consider the advisability of such a step. This question divides itself very naturally into a discussion, first of general principles and second, of detailed advantages and disadvantages.

Upon the question of general principles your Committee feels that this Board should first consider whether the commission which its members hold from the people by virtue of their election contains a mandate upon this issue. If it does, then only the weightiest reasons, and only such as may have arisen since the time that mandate issued, should lead the members of the Board to act contrary to their commission. What was the commission received by the members of this administration from the people at the last municipal election? Seven of the eight members of the present Board of Estimate were elected on a platform that declared all future subways should be owned by the city, should be built with the city's funds, construction by private capital not being permitted except when it is positively demonstrated that the city is financially unable to keep up with the demand for transit extension, and then only on terms that will preserve strict and effective municipal control. This absolutely committed the candidates to the construction of a new and physically independent system of subways—physically independent because strict and effective municipal control cannot be exercised over an extension or section which for its very existence as an operating entity depends upon

a main stem over which the city has not, and cannot obtain, control for fifty years. When the people on election day approved the declaration that future subways should be built with city funds, it was not because the taxpayers preferred to spend their own money rather than the money of a corporation, but because it was clearly appreciated that only by excluding private capital from the construction of the new subways of the city, could the city secure the kind of control which would enable it to substitute a satisfactory for an unsatisfactory operator. This Board is, therefore, called upon to state whether with a clear commission from the people to proceed with the construction of the subways with city funds and to establish effective control over them in the city's interest, it shall abandon the principles upon which its members invited the suffrages of the people and assent to establishing a monopoly and abandon control. As already stated only the weightiest of reasons arising since the popular determination was had, would justify that course.

Your Committee submits that in place of the existence of weighty reasons in favor of such a course, there remains the gravest reasons against it. Some of these reasons your Committee submits are to be found in the history of the relations of the Interborough Company with the City of New York and with the various efforts to compel adequate service by that corporation. That history discloses a corporation always reactionary, and always unwilling to comply with the reasonable requirements of authority to improve its system, its service or its equipment; a corporation always disregarding of the public comfort, always contemptuous of authority until it faced compulsion brought to bear through the machinery of the law.

Your Committee points out that the attitude of the operator of the present subway displayed by its disregard of public convenience, the contempt which it has shown for the reasonable orders of the Public Service Commission and its resistance to them has been due to the fact that that company holds the present subway under a long term lease which is not susceptible of modification by the city or by any municipal or governmental authority. The Interborough Company, intrenched behind the unassailable rights granted it by virtue of its present lease, can afford to flout

the city authorities and the Public Service Commission and to despise public indignation, since the public has the option either to ride under the conditions offered by the Interborough Company, or to walk."

To what extent, Mr. Prendergast, do you say that by May, 1912, those objections had been relieved? A. I think I covered that entire section which you have read in my statement of yesterday. In fact, I quoted from that. I said in that statement which I read to you: "In a report submitted to the board of estimate and apportionment on January 5, 1911, signed by Mayor Mitchel and me, we stated that this (referring to the platform) absolutely committed the candidates to the construction of a new and physically independent system of subways — physically independent because strict and effective municipal control cannot be exercised over an extension or section which for its very existence as an operating entity depends upon a main stem over which the city has not and cannot obtain control for fifty years." That is quoted. I said, "This was the interpretation we placed upon the platform to which I have referred, but it must be understood that in the contract made with the Interborough Rapid Transit Company, and now known as Contract No. 3, provision has been made for a recapture of the system or such a part of the system as will enable the city, if it ever so desires, to possess itself of a completely independent operable system. Consequently the issue of monopoly to which Mayor Mitchel and I referred in our report of January 5, 1911, does not exist."

And, furthermore, may I say, and what I am going to say now covers almost everything contained in that report, that report, when submitted to the board of estimate and apportionment received the votes of two members, Mr. Mitchel and myself, and six members voted against it. The relative strength under the charter of those votes was ten against and two in favor. We didn't get the support in the board of estimate that our friends probably thought we ought to get or that I thought we were going to get. We found the board of estimate against the spirit and intent of that report.

The city itself, although we hadn't many partisans and supporters — the city as a whole (and I am not expressing a new opinion

when I say that) — the city as a whole was in my judgment more interested in extending the Interborough system than it was in building a new system.

It is all very well for two men, I don't care how weak or powerful they may be, to set up their opinions and announce their policies and expect their opinions to be approved and their policies adopted, but it is an entirely different proposition for these men to secure the approval of their opinions and the adoption of their policies in the government. Other people have to be met with. The other six members of the board have the same rights we had; in voting strength, a great deal more. We didn't have the popular support for that plan that would have made it a success, and in the meantime along came the suggestion of the dual subway system and there is no more doubt than that the sun is shining to-day that the majority of the people of the city were behind the dual subway system. Their wishes, if they were contrary, would have found sufficient expression either in the press or elsewhere, or by some method to restrain the adoption of any such system. Now, to sum up, those were our views. They were not approved. In my own case, I will freely admit to you for your record — or anything else — that my own opinion, my own views on some of the questions in that report underwent a change, and a man need not make any apology for changing his views.

In fact, more often he is called upon for an apology to himself and his constituents for stubbornness in refusing to change his views. Now, that is my answer to that.

Q. The question is, how he changes them and under what circumstances and under what pressure? A. Exactly. You said it also depends upon how he changes them, the pressure brought to bear, the methods adopted to change them. My answer to that, Mr. Moss, is this, and I think it is a pretty excellent answer: That I was renominated for comptroller in 1913 with all these changes before the public, with these different changes of views, an action well understood, with the bitter opposition of the interests that have been trying to make capital out of my changes of opinion, capital against me, and notwithstanding that, the people of the city re-elected me to this very important office, and the manner in which the people of the city treat me to-day is sufficient

notice to me that no matter what may have been my change, my course has been approved, and to them and them alone I am answerable, and to their judgment I am willing to submit myself, and I am perfectly satisfied with what they think, and what other people think, I don't care.

Senator Thompson.—How did they hope to elect you and the mayor on the same ticket?

A. I will tell you one reason and it was an issue in that campaign the first few days. The mayor announced that as a candidate he would recognize the existence and integrity of the subway contract as made and that meant he was going to support them.

By Senator Thompson:

Q. Then the mayor has undergone a change? A. I don't say he has. I don't say he has at all.

Q. Who got the most votes? A. He did. And I ran against the strongest man and had the only fight that had to be made in that campaign.

Q. I wasn't here. A. You asked the question and I made the answer. I had the only fight that was made and I got a pretty respectable vote on the three tickets. Upon the three tickets, the mayor got 518 votes, McAneny , and I got 299 votes. I am perfectly satisfied with the record.

Q. The issues of that election of course I don't know. A. I am explaining them to you. We are now engaged in the process of education.

Q. I see you are and I can't diagnose the voice of the people here so well. All I know is just a few facts that appear on the surface. Judge McCall ran in that campaign and he signed these contracts, and it was necessary to have his signature to put them through the same as some of the others. They liked him. A. Shall I tell you why they didn't elect him? They defeated Judge McCall because he was the Tammany candidate and he was defeated largely because of the manner in which the Tammany organization had treated the Governor of the State at that time. Those were the great issues in the campaign and that was the issue upon which the mayor was elected. In my case I had a few other issues, and, as I say, I ran against the most popular

man in this city, Herman A. Metz. He is a good fellow. I was sorry I had to beat him.

Q. I didn't know the contracts were an issue, and if they were I can't see how they could beat Judge McCall and elect you on that issue. A. We are not talking so much about the contract; we are talking about, and I will refer you back to the subject. We were referring to the changes in men's minds and I said, with all those changes in the public knowledge, and well before the public, splendidly advertised every day by one of our papers with a large circulation in the evening and sometimes in the morning — the public did this thing, as Mayor Gaynor would say —

Q. I think we understand about the election. A. And whenever it is necessary again to run for office in this city on that or any other issue, I am ready.

Mr. Moss.— Have you any lightning rods out?

A. No, I have no lightning rods out but I am ready for a fight any time.

By Mr. Moss:

Q. When did you first hear of the Brooklyn Rapid Transit, as having aspirations to do business in Manhattan? A. I first learned of the Brooklyn Rapid Transit Company's aspirations to invade the territory of Manhattan in February, 1911. McAneny asked for an appointment in my office. He came and spread his maps upon the table and said, "That is what we would like to do ——"

Q. I don't care about the particulars of it but is that the first that you can recall having heard of this aspiration of the B. R. T. to do business over here? A. I think it is.

Q. I have an article from the New York Times of November 14, 1909, entitled "The B. R. T. would now invade Manhattan." A. I have no recollection of that.

Q. I find in Mr. Harkness's report which we have used several times, page 257, a foot not on page 259, as to the opportunity the entry of the Brooklyn company into the field afforded. See the paper read by the former Public Service Commissioners July 14, 1910, before the City Club of Chicago on the rapid growth of New York.

All the reason I have for asking you the question is to see how far back you may be able to recall the coming into the situation by the B. R. T. A. I was going to say I might qualify that. No, I am not going to, because as I have already testified in my statement, 1910 when Mayor Gaynor (I have given you the facts about this) submitted to me a map showing the connections for the use of the bridge, then Mr. Martin and Mr. Ingersoll came to see me about it. That did mean the entry of the B. R. T. into Manhattan but not involved with the dual subway system. In 1910 there was a suggestion that they should use the bridges and come in in that way but not to use Broadway.

Q. The question of the time when they began to be known as aspirants is important in view of other testimony in other parts of the record. I want to see what information you have. Now, speaking of the conference committees, in 1911 when there was the mix-up, Mr. Harkness says for a long while the officials had been urging the Brooklyn company to enter the transit development field. I think it appears very clearly, Mr. Chairman, that long before they made their formal offer they were recognized as aspirants in the Manhattan field. A. They may have been so recognized, but they were not recognized to the extent of the proposition to let them use Broadway, because that created a distinct shock.

Q. Did you ever consider, Mr. Comptroller, whether the provision of 1 per cent more amortizing, both in the Interborough contract and the B. R. T. contract, would amortize the bonds before the period of forty-nine years ran out? A. Yes.

Q. Will it do so? A. It ought to.

Q. It has been asserted that it would amortize the bonds in about forty-one years. A. It ought to.

Q. What provision has been made for that fund after the amount of money has been raised? A. That will go to the railroads. Now, if I am incorrect about this, Mr. Quackenbush, please tell me so. My recollection is that the Interborough's money costs 5 3-8 per cent, so that they haven't 1 per cent; they have only five-eighths. If that enables them to amortize their bonds before the forty-nine years have expired they get the use of that. It is well understood, and was under-

stood at the time. Absolutely considered and contemplated. You will find it mentioned in Mr. Mitchel's speeches during the period just antedating the signing of the contract and in the addresses of other men upon the subject.

Senator Thompson.—It won't cost them 5 3-8 per cent, because the way you get that is the selling of the bonds at ninety-three and a half instead of a hundred; that is the way it comes about, isn't it? The city stands 3 per cent of that, doesn't it? The city pays that now. Am I correct about that?

Mr. Quackenbush.—We are allowed 3 per cent for debt discount and expense.

Senator Thompson.—They get the 3 per cent now, on the whole \$160,000,000, as I understand. I may be wrong about that.

Mr. Quackenbush.—I won't answer off hand.

Senator Thompson.—They get it on the whole \$160,000,000 and it doesn't cost them anything. Of course, I am not a financier; I am trying to be ——

Mr. Moss.—Now, it seems to me there is very little else right here but this matter that popped up about your own financial situation, I hardly can go into that intelligently now.

Senator Thompson.—I think as long as he expresses a willingness, there is a lot of things we don't want to go into. Would you be willing for Mr. Moss to take it up?

Mr. Prendergast.—I should be very glad to show Mr. Perley Morse my books and go over them with him and then, if Mr. Moss has anything to put before this Committee, I will be delighted to have him do it. He will do it as his duty and we will talk about it.

Senator Thompson.—It is nearly half-past one and the comptroller is coming back to-morrow morning.

Mr. Davison has gone to Canada. He has gone on a vacation, so I assume it is to fish, because that is what there is up in Canada. He will return some time after July 1st.

Mr. Moss.—I will tell you what I will do with Mr. Davison. I will invite Mr. Davison to a little discussion ——

Senator Thompson.—The Lane memorandum didn't mention talks we had with Mr. Davison at all. The Lane memo mentioned those we had with Mr. Morgan personally and consequently Mr. Davison was not in a position to give us information. We couldn't accept Mr. Davison at that time as a witness and substitute for Mr. Morgan. Now, it appears that Mr. Davison is the one that wrote the letter about the mutual friend and Mr. Morgan doesn't know who the mutual friend is.

Mr. Moss.—I am particularly anxious to get his expressions because Mr. Morgan left the idea it was Mr. Willcox.

Senator Thompson.—We will suspend now until half-past two.
Suspension.

AFTERNOON SESSION.

Meeting called to order at 3 o'clock, Senator Thompson in the chair.

Mr. Moss.—Mr. Chairman, it is probable that we will not be able to examine Mr. Davison before the 1st of July and we might desire to have a talk with him in the presence of Mr. Prendergast. In order that the record may show the subject about which we would have examined him and perhaps indicate the lines of an informal interview or examination after July 1st, and state what I want particularly to inquire about. As I am passing along I may say that I think a great deal of information will come to us after the 1st of July.

Senator Thompson.—Probably more than before.

Mr. Prendergast.—As far as I am concerned, anything you might want to know from me after the 1st of July I am subject to your call.

Mr. Moss.—I don't think any one will raise the question of date with us, or the question of technicality.

Mr. Prendergast.—I wouldn't raise the question of the right of your Committee to sit under the resolution any time before

you want to publish your report. Any time you want anything from me I am ready to come before you and testify in the same way I am doing now. And in the meantime, any information you want from the finance department of a financial character of a lot of these contracts will be prepared for you.

Mr. Moss.—One of the things we do want is the list you suggested — a list of the public stock since the first of January, 1910.

Senator Thompson.—I feel this way about this first of July business. I didn't agree with the resolution of the Legislature which is without precedent, to take testimony till a certain date and then extend the time six months longer. I don't think it was wise, and I think the limitation they made of July 1st is a hamper to the work because we would have adjourned at times when we couldn't work so profitably and probably quit after the first of June and adjourned until after election, and kept politics out of the matter. Of course we keep it out any way. It isn't very easy to be the Chairman — and I am not asking for any sympathy from anybody — but that could have been done very nicely and would have done better to adjourn until after the election and taken it up in a way that you would have known and everybody else would have known would get better results.

Mr. Prendergast.—I am not going to be interested in this fall's campaign.

Senator Thompson.—But I feel that the Legislature said if we stopped taking testimony on July 1st — I feel that if it is right or wrong, I want to comply with that requirement. That is the way I feel about it. Of course, a matter like this with Mr. Davison — I don't want to interfere with officials; I am told he has been gone some time.

Mr. Moss.—I want to put up to Dr. Davison the matter of the handling of the \$250,000 that was paid by the Morgan firm, not for commissions in the syndicate, but for some sort of personal service. Mr. Morgan's testimony, you will remember, was that at the time this was done, about the 29th of November, the matter was considered to be dead, and to use his own expression,

"a line was drawn under it" and they thought they'd better be paid. I wanted to have Mr. Davison present when Mr. Prendergast was here. The testimony of the witness before this Committee indicates that on November 29th it was rather a lively time and you call attention to the fact that the letter of Mr. Rae to John Purroy Mitchel was dated October 27, 1911. The comptroller says, or said he was in Atlantic City when he received that letter and it was discussed by them briefly. On November 1, 1911, Mayor Gaynor had gone to Mr. Prendergast's office and discussed it there, so that the relation of the Pennsylvania railroad to this matter had begun to be exercised long before the 29th of November. The comptroller showed in a certain meeting at the Century Club—gives the names of persons who were present including Mr. Davison. Was that early in November?

Mr. Prendergast.—Ninth of November.

By Mr. Moss:

Q. Ninth of November. Now, Mr. Davison was present with the comptroller, Mayor Gaynor, Mr. Willcox, Mr. McAneny, Mr. Mitchel, Mr. Rea, Mr. Low, Mr. Hepburn and Judge O'Brien, all being interested in this matter, so that Mr. Davison, the working partner of the Morgan concern, very well knew then that the matter was alive. Then there was a conference, Mr. Prendergast testified, on Thursday, the 16th of November at the Metropolitan Club at which Mr. Mitchel and Mr. McAneny and the representatives of the company and the railroad were present, and we have been informed by testimony that no step was taken by the railroad that was not made to Mr. Morgan's office. The principal point discussed was the percentage allowance which we could make to the Interborough to cover the cost of carrying its money on old and new investment, allowing to it a reasonable percentage of its profits upon the old system.

He went to New Orleans on the 17th of November and didn't return for about ten days. Then there was a meeting on Thanksgiving Day at the home of Mr. McAneny. "I remember there present Mr. Willcox, Mr. Mitchel, Mr. Davison, Mr. Rea, Judge O'Brien, Mr. Shonts, and I believe some others. Mayor Gaynor was not present."

So this would indicate particularly, by the testimony of Mr. Prendergast, that Mr. Davison was actually a party to these negotiations that were going on in a very lively fashion, and all parties being brought together. How a line could be drawn on the 29th of November under this matter and it deemed to be disposed of so that whatever services Mr. Morgan had rendered by having consultations and giving advice was at an end, and there was no hope to look forward to a return from bonds or anything of that kind in the future, is something that needs investigation and leads to an inquiry as to what was the purpose of taking that \$250,000 and what was done with it.

Senator Thompson.— Can you give any line on that?

By Mr. Prendergast:

A. Not the slightest.

By Mr. Moss:

Q. You didn't know Mr. Morgan was treating this matter as dead? A. At no period of the subway negotiations, commencing with the first of January, 1910, or until they were concluded, had I any knowledge whatever regarding what were the relations of the Interborough and the Morgan firm as far as the terms upon which the business being done was concerned. As to whether they were paid \$500,000 or \$250,000, I didn't learn and didn't know at all about these things until they were brought out in the testimony before this Committee.

Q. You had had no relation with them? A. No.

Senator Thompson.— Of course on the 5th of December of that year there was a formal offer.

A. No, this was in 1911.

Mr. Quackenbush.— I want to make this suggestion, because there seems to be something else calling the attention of the counsel. It was explained by Mr. Morgan and his counsel yesterday, that the Morgan bill was sent to the Interborough a long time prior to the time that the Interborough paid it.

Mr. Moss.— The Morgan bill was sent two months before.

Mr. Quackenbush.—Two months before was the time when the Interborough did think it was entirely out of it.

Mr. Moss.—But they didn't get their money until the 29th of November. The voucher was dated the 29th of November and if they knew then the matter was alive, they should not have taken the money as for a dead thing, upon the theory or reasoning advanced by Mr. Morgan. I am glad you brought that out because he might as well have all the angles presented yesterday.

Mr. Quackenbush.—I want to be understood about that. We have a litigation pending now involving that.

Mr. Moss.—Do you know personally Mr. Brady, the gentleman concerned with the Brooklyn Rapid Transit Company?

By the Witness:

A. You mean Anthony N. Brady, the senior? I have never met him, no. I have met the junior, yes. I met him at several conferences on the B. R. T. proposition. There are two brothers, I believe. I am pretty sure I have met both of them, one did attend at least two conferences on the B. R. T. proposition and I met him then.

By Mr. Moss:

Q. At a time when another person was present? You never met him alone? A. No.

Q. What about Colonel Williams, president of the Brooklyn Rapid Transit? Had you a personal acquaintance with him? A. Oh, yes. Prior to my election as comptroller. Slight, though.

Q. During the pendency of these propositions did you meet Colonel Williams alone? A. Why, I don't—Maybe I did, I don't recall.

Q. Discussing the affairs— A. As I told you, he brought to me his original proposition and plan of it in March, 1911, and I believe he was so as to be alone with me on that occasion and he may have come in at other times, dropped into the office to speak to me about different matters.

Q. Were your relations with Mr. Williams of such a close character as to give you a personal interest in his project? A. No, no. My relations with none of the people concerned in this dual subway contract have ever been of a close character.

Q. We want to ask you about Mr. Oakman. A. I think Mr. Oakman was at a conference once and my recollection is that I was introduced to him at the Railroad Club in the fall of 1910 by Mr. Ralph Peters of the Long Island Railroad Company. I was not lunching with them but I met Mr. Peters in a business way and I think he introduced Mr. Oakman to me then. The only reason I think I recall it was because we had a political discussion.

Q. I want to include the name of Mr. McAdoo. A. Yes, I first met Mr. McAdoo in January, 1910. He was very anxious to have the city take over for the use of the board of water supplies, or one of the departments a loft or two in the Terminal building, it is called the Hudson Terminal building. He called upon me and I went down to the building at his invitation and he showed me some space he would have been glad to rent, but nothing could have been done about it because he didn't have sufficient space for the departments that were looking for room at that time. During the year, I met Mr. McAdoo a good many times and then after he had made his offer of November 15, 1910, I saw him several times, usually though, with Mr. Mitchel.

Q. Did you ever meet any of these gentlemen while you were with Mayor Gaynor alone? A. Mr. Brady, certainly not. Oakman, no. McAdoo, no. Who was the other? Mr. Williams, no. Now, let us be careful about Colonel Williams. Colonel Williams of course was president of the B. R. T. and the mayor and I were members of the transit committee. We had meetings of that committee. I won't say that on some occasions Mr. Williams may not have come into the room at the same time Mayor Gaynor and I were alone, but I don't believe he ever remained alone there. We have met more than other men because we have had a great deal of business with the city, entirely unrelated to the subway business.

Senator Thompson.—Colonel Williams, as I understand it, had some acrimonious correspondence between himself and the

mayor at that time. They didn't get along good, apparently. Is that true?

A. You mean in the spring of 1911? The Morrissey letters you have in mind, I suppose. But really, you know, there is so much acrimony in the public business it is almost impossible to follow the different bickers and disputes.

Senator Thompson.—I understand one accused the mayor of having his office at 165 Broadway. Colonel Williams was not getting along with the mayor and he naturally felt friendlier toward you.

A. Oh, no. Although at the time our relations were very friendly.

By Mr. Moss:

Q. Did you consider that the apparent antagonism of Mayor Gaynor to the B. R. T. was a real antagonism? A. What do you mean by "real antagonism?"

Q. I mean that would carry itself so far as to deprive the B. R. T. of participation in the subway business. A. I wouldn't express any opinion on a subject like that; it is out of the question.

Q. I wouldn't want you to speak of that unless you felt free to. A. I certainly do not. I have found that men in public life have their friends and no reason why they should not. There are people with whom they are more friendly than they are with others. And once in a while those particular friends will be interested — sometimes it is embarrassing to a public man because he cannot utterly foreclose from his mind the fact that his friend is interested there.

Q. Don't you think, I guess you won't hesitate to answer this question, don't you think in the deal — I mean in a business sense — in the dual deal, or dual contract — A. Call it the dual subway contract, then we won't have to define it.

Q. I don't mean simply contract, I mean the whole thing.

Senator Thompson.—Negotiations leading up to the dual contract.

By Mr. Moss:

Q. I can't think of any word that is so apt as the word "deal."

A. Let's call it contract and we won't have any more disputes.

Q. You don't think the B. R. T. got much the best of you?

A. I think the B. R. T. made a very good contract. I think they did.

Q. I notice when they are here that with a great deal of much gusto Mr. Yeomans will say that they are going to produce money for the city long before the Interborough does. A. That is true.

Q. Because they have got a much better proposition. I mean, being in in the Broadway line, and they have got bridges to hand, they have got ever so many things there which seem to be a good thing. That is why I asked the question concerning Mr. Gaynor. It would appear from all the newspaper accounts and indeed from testimony of witnesses that he was exceedingly antagonistic to the B. R. T. and if he had a preference, it was for the Interborough. Ultimately, they came through in this contract, or deal, or whatever it is, by which the two forces apparently in conflict came together and the B. R. T. has much the best of it. A. Is not that the interesting fact that no matter what may have been the antagonism felt, when the question was finally settled it was settled in a way that seemed to be most satisfactory to most of the people who were concerned; certainly most satisfactory to all the city officials. I find in matters that come up before the board of estimate and apportionment that some members will have very strong preferences one way or another, but usually when the question is settled, those differences have been composed and reconciled and that is what happened, I presume, in the subway question.

Senator Thompson.—According to Mr. Quackenbush, the Interborough put more money in and ought to have gotten more out. They put in \$13,000,000, apparently, and there was a lot of credit on that.

Mr. Moss.—The question has been put to this Committee pretty strongly and necessarily must find its way to the witnesses, whether this apparent conflict between what might be called the B. R. T.

interests and the I. R. T. interests was not more than appearance in reality; whether those two interests were not actually pretty close together; whether the banking interests, the Kuhn-Loeb interests and the Morgan interests were not pursuing an apparent conflict in order to get this large dual contract through with extensions provided out of the territory where no return will be expected for many years, and getting through a big thing through the appearance of a reconciled conflict which they could not have got by actual antagonism or individual efforts. That is the question that is put up quite frequently by people who ask what we have arrived at in our search for evidence, and I want to put that question to you whether it had occurred to you that these interests which you had to pass on as a public official were not, underneath the surface, pretty close together. That the banking interests and the railroad interests in their conflict, did it occur to you that it was more apparent than real? A. Mr. Moss, in the year of 1909, I think it was, the first this term "gentlemen's agreement" between the Interborough and the Brooklyn interests was first commonly used —

Q. Was that in 1909? A. Yes. You will find it quoted in my speech of October 19, 1909, at the Academy of Music, Brooklyn. That was common report. People talked of that. People very often talk in a way that does not accord with facts at all. I think that if you had been a member of the conference committee, McAneny's committee, for instance, or a member of the Public Service Commission, during the time these contracts were being discussed, I think you would be satisfied that each road was striving in a most energetic way to secure for itself all the advantages that it believed belonged to it and that there was no appearance in form — rather insuperficially or in fact of any working agreement between the two. Now, I don't aver that to you as an answer to your question at all; I merely give you what is my general opinion of the situation. That is all. I say that to you. I think that probably the man who would be best qualified to answer that question, if it is one that need be presented at all, is Mr. McAneny, because he was in charge of the conferences in the early stages, during the spring of 1911; prior to the submission of that report of the 13th of June I never attended any conferences at all. I never

had anything to do with them. I was as far from them as you are, but once in awhile Mr. McAneny would tell me of different matters that had been discussed, but I had nothing whatever to do with them, and in the fall I did get into the conference.

Q. Speaking of Mr. McAneny, did it seem to you that he was more interested in the B. R. T. than in the I. A. T.? A. I have no — yes, I want to answer that. That is one question upon which I will express an opinion. I have known Mr. McAneny since the campaign of 1909, and in all my experience, either in business or in politics or public life, I have never known a man who approached every task that came to his hand with more single-minded purpose to serve the public interest than Mr. McAneny.

Q. I am not speaking of it as conflicting with a desire to serve the public interests, but the press seems to quote Mr. McAneny as believing there was more for the city in the B. R. T. A. The press couldn't help being otherwise, because from the very nature of the contract; if you will examine the contract you will see it couldn't be otherwise.

Q. So I think there grew up a rather public view of the matter that if the Interborough had a man that preferred it, among the officials, it was the mayor, and if the B. R. T. had a man that preferred it among the officials, it was Mr. McAneny. A. I don't think that was the idea at all. I am very sure it was not.

Q. I am not saying, in this question — A. As to Mr. McAneny; I am not saying as to the mayor. Of course, he had been absolutely frank in his advocacy of the Interborough proposition on several occasions. As I have told you, he submitted an opinion, or report, on January 19, 1911, favoring the adoption and approval of the Interborough proposition of December 5th. There was no concealment in his position.

Q. By the way, having put the report of January 5th in evidence, giving the views of Mr. Prendergast and Mr. Mitchel, I shall want to put in in the same connection, the report rendered by Mr. Gaynor and Mr. Prendergast's answer to that. A. The answer to that was not a public document.

Q. It was printed. A. It was not a public document; the answer to that was made in this way. On Wednesday night, January 18th, Mr. Bullock phoned to me that he had this proposition

of Mayor Gaynor, and I asked him to send it over to the house so that I could look at it, and, after examining it, I called him over the telephone and he distributed it to the other papers, and I stand by it.

Senator Thompson.—You say Mayor Gaynor in March, or February, advocated the adoption of the December 5, 1910, offer of the Interborough? That would really corroborate your statement of yesterday that on July 19th, in the evening, the mayor came out with what Mr. Moss calls “the damnable rascality letter” after he had learned your position. A. I explained to you yesterday that I am very sure the mayor — Mayor Gaynor — did not know the position I was going to take upon the July 19th offer at the time he made his statement. I am positive of it. Gentlemen, I am so positive of it —

Senator Thompson.—The comptroller states that the December 5th proposition was really a worse proposition for the city than the July 20th proposition.

A. That is true.

Q. And the mayor expressed himself for this December 5th proposition, tied himself up for it. A. He said he was in favor of it.

Mr. Moss.—He frequently spoke afterwards that he was disappointed in not taking it, and he favored the one in 1912. He favored it because it was near the proposition of December 5, 1910.

Senator Thompson.—I can't understand why he wrote that letter, except on the theory —

A. I don't see how he could have known I was going to vote that way.

Senator Thompson.—Have you any other theories as to why he wrote that letter?

A. I will not indulge in theories regarding what was in another man's mind, especially when that man is not here to answer for himself.

Senator Thompson.—You can't from a public viewpoint stop inquiring about a public matter simply because somebody dies con-

nected with it. Is there any other fact that you know might show a motive for writing the letter at that time?

A. I must decline, Mr. Chairman, to go into any discussion of Mayor Gaynor's attitude upon the subject.

Senator Thompson.—I don't care to discuss his attitude. I assume he knew your attitude; that would give a motive that would be a fact. You say he cannot have known your attitude. That is your judgment.

A. I am certain he didn't, because I don't see how he could have known it. The only people to whom I had spoken that day indicating that I might not approve that contract were Mr. McAneny and Mr. Willcox. I have testified in my statement that I met those gentlemen at lunch at their request, to talk over the general situation, and I expressed myself then as doubtful of the wisdom of going ahead according to the promise that I had made on Monday night. When I say "promised" I mean I said, "Yes, I will agree to the 9 per cent." Mr. McAneny and Mr. Willcox will both verify what I said to them during the afternoon, no doubt. I did not see Mayor Gaynor all day, and unless Mr. Willcox or Mr. McAneny spoke to Mayor Gaynor during the afternoon I don't see how he could possibly have had any idea that I was going to change my mind, and, furthermore, I don't see how they could have seen him during the afternoon, because he went away that afternoon on the police boat patrol, and that was dictated on the patrol, because it was handed to the papers immediately after he came back to the City Hall. I saw it at half-past nine o'clock.

Senator Thompson.—Was there any facts that you have not related to us that might have brought about that letter?

A. No, I know of none.

Mr. Moss.—I have just handed the stenographer the mayor's minority report and the comptroller's reply to it.

Witness.—Is that the American? That is not the complete report.

Mr. Moss (To Stenographer).—Copy these into the record, one after the other.

Same read as follows:

"Mayor Admits His Pre-Election Pledges Were for City Built and Controlled System; Adds Any Subway Would be That. Claims Tri-borough Would Cost \$250,000,000 or \$225,000,000 at Least, and Works Out Conclusion This Would be Deficit. Declares City is Ready Now to Make Contracts with Interboro and Expresses Impatience Over Useless Talk and Further Delay.

The Mayor's Statement.

To the Board of Estimate and Apportionment: As this board has already voted against the report of my two associates on the transit committee it is not necessary for me to file a minority report. But it may be well that I at least present a report that I do not agree to a number of statements as of fact in the majority report, and at the same time I desire to call attention to some other things in said report which are founded, it seems to me, on an erroneous conception of the law and the facts, and which give a false color to the report throughout.

(1) They oppose the proposition of the Interborough Company that the city build certain extensions of the present subway (I quote) 'because the mandate of the people as expressed in the election of the members of this board, was against monopoly and in favor of city-built and city-controlled subways.'

This refers to the political platforms in the last city election. These platforms did favor city-built and city-controlled subways, in language more or less definite.

The drafters of them seemed to have been under the delusion that some other kind of subways could be built under the sections of the statute which apply to the building of city subways. But that is not so. The said sections provide only for the building of city subways by the city through the Public Service Commission. Though platform makers did not know this, we should not be astray in respect of it.

The city builds the subways and owns them from the start. There is no other way. It is too bad to see a contrary notion, and that we propose to follow it, put in the minds of the people who do not expound the matter for themselves and unconsciously, it may

be, depend wholly for their inspiration or information upon vicious sources.

(2) The false notion, long abroad, and industriously disseminated, that private capital, or a private capitalist who was often named, built the present subway in Manhattan and the Bronx, has not yet been wholly driven out of men's minds. It took a few of us several years to dissipate it to some extent.

Not one dollar of private capital went into the construction of the said subway. The city put every dollar in it. Nor did it loan the capital to build it, as is sometimes loosely said. On the contrary, it built the subway and owned it from the moment of completion and leased it for operation.

I regret to have to recur to things so fundamental, but I do it only that no one shall be misled if I can prevent it. Of course, my said associates do not mean to mislead, and none of us will be misled. But what about others? All I say is that my said associates have not made this matter clear, and that their report, as a whole, tends to make people believe that the offer of the Interborough is to build for itself, and thereby get some ownership or control which it would not otherwise have, whereas its offer is that the city build under the statute.

The report of my associates substantially admits that if what is called the tri-borough route should be built by the city, the Interborough Company would probably be the successful bidder to operate when bids for operation should be advertised for, as required by statute, after construction is completed; if, indeed, any bidder for operation at all could be found.

But they say (I quote) 'it is not of first importance that the operation of those systems (namely, of the tri-borough and of the present subway) should be in different hands, if only there are two distinct separate and self-sufficient systems.'

But, pray, if both systems are operated by the same company, or by allied or subsidiary companies, how are they 'distinct' and 'separate'?

These words and phrase, 'independent system,' may be very attractive, but I hope they will delude nobody, but the history of the world shows how potent attractive but empty words and phrases always have been in misleading thoughtless people. It is well that,

owing to our splendid system of schools, the illiterate and thoughtless are no longer the majority among us.

The cost of constructing and equipping that system — triborough — is put at \$250,000,000. I believe no competent person has claimed that it would be less than \$225,000,000. But if we say \$200,000,000 the case is still hopeless. Five and one-half per cent of that sum for annual interest and sinking fund is \$10,500,000.

The highest estimate of gross receipts from operation of the system that anyone has made is \$16,000,000. Forty per cent of that for maintenance and operation would be \$6,400,000. This added to the said interest and sinking fund amount to \$10,000,000 already shows a deficit without going into other items.

But the case is worse, for the gross receipts would probably not reach \$16,000,000. As is well known that system recently put up bids for operation in advance of construction, but no bid was forthcoming. No one with private capital for investment could see anything but a deficit ahead.

Some are glad of this, because they have in mind, although they keep it to themselves pretty well, that for lack of a bidder the city would be forced to operate the road, and this is the object which they are striving for.

Some time in the future, namely, when the public virtue and intelligence of the community is fit for it, the city will be operating all of its public utilities, including city railroads, but that time has not come yet, in my judgment.

The report of my associates says that if great need exists the dock funds can be used to build subways. I regret to hear this suggestion made. There are certain things which need to be done to improve our docks and for the handling of freight along the docks, which are as essential to the prosperity of this city as the building of subways.

The dock commissioner has already prepared the plan for a railroad along the docks to handle the freight and to supersede the surface tracks of the New York Central running down through the city. A bill is now being prepared to be sent to the Legislature to carry this out. The purpose is to apply the dock funds to this, among other things.

The report of my two associates says that a year ago the Interborough Company offered to furnish all the funds needed for the city to build the extensions to the present subway, and asks what has caused that company to change its mind in that respect. The Interborough Company never made such an offer.

It did offer to furnish the money to the city to build the extension from Forty-second street down Seventh avenue and to the Battery, and the extension up Lexington avenue to the Bronx. The extensions which it now proposes that the city should build, and to which it offers to contribute, are in mileage four times the length of the fragments embraced in the said offer by it a year or more ago.

Let us not confound things. No doubt that company would be only too glad to renew the said offer, and have it accepted.

The said report of my associates also leaves the impression that the present proposition that the city build extensions adopts the 'Tri-borough route.' The contrary is the case. The tri-borough system, so called, was made up principally of routes which were laid out years ago by the old rapid transit board as extensions of the present subway.

What we need of all things is to stick to what was designed from the beginning, namely, that since the city builds and owns the subways it should build one great, comprehensive system to connect all of the boroughs and be operated on a single fare of five cents throughout the whole system.

I am unable to comprehend why any one should ask that two or more systems should be built, thereby introducing the necessity of paying a new fare every time you change from one line to another.

If we carry out the present proposition and thereby have all of the subway extensions built by the city, the city to put in only \$53,000,000 of capital, all in excess, estimated to be \$75,000,000 to be contributed by private capital, the city will then be able to devote its funds hereafter to the building of extensions in the boroughs as they become necessary.

It can, for instance, build extensions such as through Queens to connect with the Steinway tunnel, in Brooklyn to connect the Fourth avenue subway with Coney Island, and also with the

borough of Richmond under the water, as has been pointed out by the president of that borough.

If the city ferries to that borough are continued to create the present huge deficit, the quicker the subway extension to St. George be built the better for the interest and sinking fund charge on the cost thereof would be less than such ferry deficit, as now appears.

The said report states that the credit of the city should not be loaned to any existing company for extensions. This can only mislead those who do not know the law of the case as laid down by the statute, although not so intended. The city is not permitted to loan its money or its credit to any company.

All it can do is to build the subway itself through the Public Service Commission, as I have already pointed out and yet some will continue to repeat that the proposition is that the city should loan the money to the company. Indeed, some go so far as to say that the proposition is to give it to the company — to make a present of it. But of course, we must at some point cease to regard such statements, however we may regret to see thoughtless persons misled by them.

Permit me to say, in conclusion, that the vast majority of the intelligent people of the city of New York desire this board now go forward in this great matter, after a year already spent in leading up to it. It is justly expected of us that we do now proceed immediately. An end should come to this perpetual talking and arriving at no result.

The Public Service Commission is now ready to proceed to formulate construction and operation contracts, and if there be any delay the cause is here in this board.

W. J. GAYNOR,
Mayor."

"Comptroller Dissects Various Assertions of Mayor and Points Out Their Absurdities; Shonts' Offer Extends Period of Lease. Intimates Mayor Cannot be Serious When He Talks of \$225,000,000 for Subway; Figure Never Above \$125,000,000. Explains Reason for His Contention for Independent Line is to Free City From the Grasp of an Intolerable Monopoly.

The Comptroller's Statement.

Practically everything said in the report written by the mayor has already been stated by him in other communications. He is now absolutely committed to the acceptance of the proposition of the Interborough Company. In view of this fact he could have made a much more useful contribution to the literature of his discussion by addressing himself to the complete analysis of that proposition contained in the majority report submitted by Mr. Mitchel and me.

It is entirely specious to try and convey the idea that the Interborough Company is now willing to reduce its leases to a term of forty-nine years. We have shown that this offer means a practical reduction of but fifteen years from the aggregate of the original term, with renewal periods for the longer of the two leases and of but three years in the case of the shorter.

In view of the fact that the city has the right to enter upon a revaluation adjustment with the Interborough Company at the expiration of the fifty-year period on the Manhattan and Bronx lease and at the end of the thirty-five-year period in the case of the Manhattan and Brooklyn lease, the effect, as we have already said of the present proposition would be to extend for a considerable number of years operation under the terms which are now giving the Interborough Company 17.2 per cent on its investment.

It is interesting to have the discussion turn now upon the question of platform pledges. The mayor says that the political platforms of the last city election favored city built and city controlled subways 'in language more or less definite' but that the drafters of those platforms seem to have been under the delusion that some other kind of subways should be built under the section of the statute which applies to the building of the city's subways. The mayor must now admit that he was one of those thus deluded. He helped. He helped to draw the subway plank in the Democratic platform.

He has told us that he insisted upon that plank being drawn in exact accordance with his wishes. No reasonable man has the slightest doubt as to what that platform intended, and the mayor's present position simply illustrates that for reasons best known to himself he prefers to abandon his own platform and

assume an attitude on the question of subway construction that neither he nor any other candidate would have dared to take prior to the last city election.

It is true that Mr. Mitchel and I are in favor of separate systems. The mayor seems to think that because the bidders for the operation of the new system might be the Interborough Company, that this destroys the merit of our claim for a separate and distinct system.

He has either failed to discover or he refuses to admit that what we are in favor of is a system physically independent, so that if at the end of the ten-year period the operator was not satisfactory to the city, the city could then take over such a system, secure a new operator and have a complete system and not fragments and ends which it would have to take over if at the end of the ten-year period the Interborough's operation of the proposed extensions was not satisfactory.

The mayor's discussion of the cost of the tri-borough system cannot be treated seriously. It was probaby not intended as a serious argument. No one that I know of is in favor of building any system costing \$225,000,000 and such a system as should be built need not cost more than \$100,000,000 to \$125,000,000.

The mayor has simply constructed a straw man and proceeds to annihilate him. The majority of the transit committee has never been committed to the original proposition of expense involved in the so-called tri-borough route, and I am satisfied that if others believe that an offer to operate the tri-borough route would receive fair consideration and not be used simply as bait for the Interborough, the city would have before it to-day a comprehensive proposition which would decide the issue in favor of an independent system.

When one considers the tremendous figures of cost now indulged in by the mayor as compared with his pre-election statements that even eight millions of dollars per annum would be sufficient to help build our subway, we are justified in believing that his present argument is not serious, if he has any faith in his own opinion on the subject before he was elected.

It is true that the majority report suggested that if necessary a portion of the funds made available by the exemption of self-

sustaining dock bonds could be used for subway purposes. The mayor seems to believe that all the funds made thus available will be required for new facilities on the west side of the city.

I want now to call attention to the fact that if modern terminals are to be constructed on the west side for the benefit of the railroad and steamship carrying companies, these companies must bear their portion of the expense.

The mayor is right when he says that the offer of the Interborough some time ago to build at its own expense did not comprehend any such extent of construction as the present proposition. But he proceeds to argue that because they now want to do more than they were willing to do some time ago, that the city should now furnish a good part of the money. This is not the way that I regard it.

When Mr. Willcox insisted that the Interborough should take some of 'the lean' if it wanted the 'fat,' I assume that he meant that in consideration of the city extending the Interborough's opportunities for profit, the company should be willing as its part of the consideration to undertake all its natural extensions. This is my present position.

Whatever the company has now offered to do constitutes nothing more than its natural extensions except that I do not believe that Lexington avenue should ever be included in any arrangement made with the Interborough if it were doing everything with its own money, because I believe Lexington avenue should be held as part of an independent system.

The inducement offered to Queens and Richmond should not prove enticing to those localities. It is all very well to talk about the city pledging money later on, on the theory that the Interborough agrees in its proposition to operate such extensions. But it must not be forgotten that this agreement is contingent upon the city assuming any deficit that may arise from their operation.

I think that it would be much better for Richmond to secure its subway facilities as a party of a complete independent system which would have enough of excellent-paying territory to enable the entire system to be run at a profit, and not make such an extension a drain upon the city."

Mr. Moss.— From the time of the “damnable rascality letter” and your own letter to the American, is not it a fact that you and the mayor occupied a pretty closely the same position until the contract was adopted?

By Mr. Prendergast:

A. Well, as I have told you, I never discussed the question; I don't believe Mayor Gaynor and I ever mentioned the subject. We never discussed the subject at all until that interview of November 1, 1911 and after that I think our position was pretty much the same all the time.

Q. Yes. A. The mayor wanted a settlement made and I was in favor of a settlement being made because I thought the dual subway system was best.

Q. You don't recall any situation in which you and the mayor antagonized each other, or each other's positions on the subway situation after that date of July 30, 1911? A. Mr. Moss, you haven't done me the honor to follow closely my statement of yesterday.

Q. You see it was a pretty long statement. A. I will admit that.

Q. I'd be glad to be reminded. A. There was one very decided difference. Coming to the point where it had been agreed with the Interborough, after the Interborough had submitted its offer of February 22, 1912, “we were of the opinion that action should be taken upon both propositions at the same time. In other words, that the two contracts should be approved simultaneously.

The most important development of this period of further consideration was a letter written by Mr. Shonts to Mr. McAneny under date of May 4, 1912, advising him that because of the unexpected delay on the part of the committee of which he was chairman, in making a report to the board of estimate and apportionment upon the Interborough proposition, the bankers had notified him under date of May 3d that because of changed conditions, if they did not hear from his company within the next few days that the proposition had been accepted by the responsible city authorities, the bankers would be compelled to cancel their

existing agreement to finance the proposed rapid transit improvements.

Mr. Shonts also wrote a letter to Mayor Gaynor under date of May 6, 1912, explaining the situation to him and stating further that Mr. Morgan had told him (Mr. Shonts) on that day that conditions were so unsatisfactory that he might be compelled to withdraw from the agreement to finance the contracts in any event. As a result of this letter Mayor Gaynor wrote to Mr. McAneny under date of May 7, 1912, sending him the letter from President Shonts and stating that he considered the situation of so grave a character that he desired at once to notify all the members of the board of estimate and apportionment; that nine weeks had elapsed since the offer of the Interborough Company, that there did not seem to be any reason for delay, and that if prompt action had been taken the contract could have been ready by that time. I believe it was on the day he sent this letter to Mr. McAneny that Mayor Gaynor asked me to call upon him. He explained the situation as I have described it in these communications, and expressed the opinion that the board of estimate and apportionment should take immediate action to approve the Interborough proposition.

I went to see Mr. McAneny immediately and after a talk with him concluded that we would not be justified in doing anything of the kind, and that until the different questions affecting the Brooklyn contract were settled, we ought not to take any definite action upon the Interborough offer.

The mayor called an informal meeting of the board of estimate and apportionment and put the question before the members. All the members were present. The mayor stated that he would offer a resolution at the next meeting approving the contract with the Interborough Company. Mr. McAneny led the opposition to this idea and I supported him. We prepared a resolution stating our unwillingness to take action immediately."

That resolution was prepared by Mr. McAneny and me as we sat at the table. I wrote it in my own hand and I am agreed it was quite as shaky as that letter of the American.

"This resolution was approved by a vote of ten to six, Mr. Mitchel, Mr. McAneny, the presidents of the boroughs of Queens

and Richmond and I voting for it; the mayor and the presidents of the boroughs of Brooklyn and the Bronx voting against it.

Shortly afterwards, through the good offices of Mr. Low, an agreement was arrived at with the bankers. All the questions affecting the Brooklyn Rapid Transit Company were promptly settled by the Public Service Commission, and Mr. McAneny prepared his report upon the Interborough offer, which advised its acceptance."

So, I will say that while that difference of opinion did not reach the point where we said unpleasant things to each other, the mayor was very, very decided in his opinion that we should immediately approve the Interborough offer and Mr. McAneny and I were just as positive that we should not do anything of the kind until all the questions of routes some of which were awaiting the mayor's approval were settled, and the view that Mr. McAneny and I held against the Interborough at that time prevailed. As I recall, that is the only difference of opinion that I had with Mayor Gaynor about the matter.

Q. How did that come out? Did he yield gracefully? A. He didn't bring up the question at the regular meeting. The vote against it was so decisive at the informal meeting that he saw no use in doing so. The very next day, through the good offices of Mr. Low, there was a meeting between the mayor, Mr. Willcox, Mr. McAneny and Mr. Morgan, and everything was adjusted. That is the word that I got and then all the routes of the Brooklyn Rapid Transit were approved at the next meeting of the board of estimate and apportionment and everything was satisfactory.

Senator Thompson.—The mayor, in his letter, says: "I have too long written and spoken against such damnable rascality"—that refers to the contracts. Now, the differences that there were between that contract before July, 1911, of course this letter refers to the one in May, 1912, which was open——

A. I guess they were all practically in the offer approved in May but they are all in the contract and the contract merely carries out the agreement of May, 1912.

Senator Thompson.— This is valuable, because it calls our attention in a simplified way to the differences. That is what you intend to do.

A. And those are not all, by the way; there were a good many other differences in the contract but I didn't care to cumber the report.

Senator Thompson.— The first proposition is that you saved the difference, as you figure, between 9 per cent and 8.76 per cent. Well, now, the company contending for that \$307,200, the city contending the other way, that could hardly be termed "damnable rascality" on the part of the company.

A. You are asking me to pass judgment or express an opinion on something Mayor Gaynor said.

Q. No, no. I am asking you—— A. There are some people, Senator Thompson, who always believe that if a corporation gets one cent more than it is entitled to it is "damnable rascality."

Q. You don't think the mayor had that in mind by his term "damnable rascality?" A. I cannot express an opinion as to what the mayor had in mind.

Q. They agreed to equip and operate all future extensions and to furnish the necessary capital on the same basis of interest and other carrying charges. Under the plan of July, 1911, it would have received an additional profit of 3 per cent upon all such investments; that they would have permitted the contract to be let by the Public Service Commission, and the next one that the cost of carrying the engineering staff of the Public Service Commission engaged in the construction work should be included in the general cost of construction and capitalized by the city.

But those things, like the question of whether the amortising is forty-one or forty-nine years or seventy-five years or seventy-four years — the question of classification of operating expenses — appeal (I presume you mean the prior determinations, there).

A. Which one are you talking about?

Q. Six. "Under the new contract the Public Service Commission is vested with a more thorough control over the classification of operating expenses, and has authority to pass upon both the character and amount of such charges, with an appeal allowed

to either party." A. That meant more authority on determination of what should properly enter into operating expenses and I can say that upon that classification, and upon the rigor with which the Public Service Commission exercises its jurisdiction will depend the success of these contracts and that is why it was put in there.

Q. "And the existing plant to be examined by the Public Service Commission, the elevated lines to Astoria and Corono, connecting at the Queensboro bridge with the lines of both the I. R. T. and the B. R. T. subject to joint operation. The provision for the 'swapping' of the legs of the present subway, the clause making the company's obligation dependent upon the 'lien of any existing mortgage' has been eliminated."

Well now, was there anything in any of those that might be regarded as damnable rascality or rascality on the part of the railroad representatives to contend for it? A. If you were not asking me to comment on what is in reality a remark made by Mayor Gaynor — I will not be drawn into any discussion pertaining to Mayor Gaynor except where I am asked to testify as to facts of interviews I had with him.

Mr. Moss.—Do you see any moral wrong in any of those points?

A. I am not going to let you catch me on that side of Robin Hood's barn.

Senator Thompson.—Nobody is trying to catch you. The public is interested in this letter written to the people of the city of New York and so far as the public is concerned it doesn't die; so far as the product of these negotiations is concerned that doesn't die either. The fact that one man that happened to be in a public representative capacity at that time is dead doesn't change the situation at all and that is not a question of taking up the character of a dead man; it doesn't enter into it. It is infinitesimal in comparison with this situation. I think the question is fair. Aren't all those things that you called attention to, the whole ten of them, aren't they matters of ordinary negotiations between the parties?

A. If you had negotiated with the Interborough you wouldn't think so.

Q. You think those contentions amount to rascality on their part—to contend for them? A. I didn't say that.

Mr. Moss.—If you two gentlemen reached the same point on the same day and pretty nearly traveled in each other's company from that time on, and if I may help the Senator out, as he helps me out every once in a while—since you gentlemen reached the same point practically, do you want to be considered as at all joining in or making any criticism that the action you complained of or the print you complained of were morally culpable?

A. The witness declines to answer.

Senator Thompson—I am not going to press an answer to that because the word “damnable rascality” can be looked up in the dictionary and the contracts can be read.

Mr. Moss.—I quote from your report of January 5, 1911. I think this is on the eighth page, if I remember that correctly. I gave the original to the stenographer and therefore I haven't same.

“From information furnished by the chairman of the Commission, it is the understanding of your Committee that these negotiations between the president of the Interborough Company and the chairman of the Commission, looking to the construction of the Interborough extensions with Interborough money continued until early in the spring of 1910. According to the Chairman, his mind and the mind of the president of the Interborough had met upon all the essential features of the plan, details alone remaining to be adjusted. During a suspension of these negotiations, the chairman of the Public Service Commission was astonished to learn of the letter of July 5, addressed by the president of the Interborough Company to the mayor, a copy of which was later forwarded to the chairman of the Commission as well. This letter contains the surprising suggestion that these extensions (except that Lexington was substituted for Madison avenue) be constructed for the company with city funds, with certain guarantees by the city. This letter has within the past two months been described by the president of the Interborough Company as an offer submitted to the Public Service Commission.”

Now the point of that surprise was, if I got the meaning of your language, that the company was now beginning to demand city money. Had you ever seen the tentative proposition made by Mr. Shonts and delivered by Mr. Shonts to the Public Service Commission or some one representing it, dated March 22, 1910?

A. I have already testified here two or three months ago that I had not. I never saw that written proposition.

By Mr. Moss:

Q. Did I ask you that? A. One morning—Monday morning—the mayor testified first and I testified right after.

Q. Then I suspend that for the time being. I want to get into the record some correspondence between the mayor and Mr. Rea.

“August 2, 1910.

Dear Mr. Rea:

I have read your proposed letter over and it seems to me very timely, and will no doubt have a beneficial effect. The advocates of the tri-borough route published the said route with a lot of extensions that are not to be built at all, unless on the assessment plan. It would be just as easy to add a lot of such extensions to the other proposed routes, so as to make them look larger. The tri-borough map in the Outlook is very misleading.

Very truly yours,

(Signed.) W. J. GAYNOR,

Mayor.

Samuel Rea, Esq.,

Broad Street Station,

Philadelphia, Pa.”

Did you understand, Mr. Comptroller, that the tri-borough route had extensions appearing upon the maps that were not intended to be built for some time? A. I want to review the record on that. That may be. I won't say that is not so, or that it is so.

Q. This looks as though the mayor, in confidential correspondence with Mr. Rea, which would be a natural thing to expect in view of the letter which came in through Mr. Freeman—that in

confidential correspondence with Rea, he hit the tri-borough proposition by saying it had extensions tacked on to it which were not intended to be built. It never was in your mind, was it, Mr. Comptroller, when that tri-borough route was proposed, and when you more or less stood for it, that the whole thing necessarily must be built at once? A. Well, the cost of the tri-borough route, as explained, was \$147,000,000 just as you read in that statement this morning.

Q. But not necessary to be spent in one lump. You had in mind that it could be spread over a period of time. A. It would have to be because there wouldn't be sufficient borrowing capacity —

Q. That was the mayor's idea. A. It would depend upon being able to furnish a sufficient sum of money each year to take care of the sections that you would want to build because you couldn't build a part of the route and expect to operate that. It was a continuous route. You might put it through providing you could so time the doing of the work that you could have the whole thing finished at one time.

Q. You had no proposition with bankers which would require you to put it through in one transaction in order that the bankers might handle it in one transaction. You could have managed it, as the city had the money. You understand that. Now, this letter which I have read appears to be an answer to one of July 30th, written by Mr. Rea, second vice-president of the Pennsylvania Railroad Company to the mayor.

“I desire to address a letter to you expressing my convictions on the subway situation in the hope that it will be helpful to you in solving some of the problems connected with that big question which has been delayed so long that it has now assumed great proportions.

I enclose herewith a draft of such letter in order to save your time in discussing the matter in detail with you. May I ask you to kindly read it over and tell me whether it will be helpful?

I would also be glad, if it will aid the situation better, to send it to you now and have it published for what use it

may be to the public, or else not send it until about the 15th of September when many of those who are out of the country will have returned."

I read that as showing the genesis of this proposition of August 4, 1910, signed by Mr. Rea, addressed to Mr. Gaynor as mayor of the city of New York and Mr. Willcox, as chairman of the Public Service Commission. It is probably not necessary to read the letter here now but on its face it is an uninspired proposition with the explanatory letter attached to it and the mayor's answer to it it is a tactical letter. A. Proposition from Mr. Rea, or a suggestion from Mr. Rea?

Q. A suggestion. Suppose I read it. A. I don't know anything about it.

Q. Here is the significance of it. This is a year before the public entrance of the Pennsylvania into the subway situation — August, 1910. It has been supposed, and I think you supposed it from the reading of your statement there, that there was a time when the Pennsylvania people intervened — A. Actively.

Q. And their intervention caused the lagging negotiations to be spurred up. A. It caused a resumption of negotiations.

Q. But according to the Freedman-County letter — according to this letter from Rea to Gaynor and Gaynor's action upon it there was an underground relation — and underground negotiations — between representatives of the Pennsylvania Railroad and the mayor which was designed to assist the mayor in his subway intentions? A. Well, I don't know as you call it underground. The mayor of the city is representative of the whole city, and it is a very natural thing for one great official to communicate with him and make suggestions. I wouldn't be surprised that something of the kind is being done every day. It is very reasonable.

Q. This wasn't published, Rea's letter to Gaynor of August 4, 1910.

"I have recently returned from my vacation, and note with pleasure the announcement of plans regarding new subways for the city of New York, which contemplate extensions of the present subway up the east side to the Bronx, to be under such avenues as the Public Service Commission may approve and down the west

side under Seventh avenue, with a Brooklyn connection, and also a Manhattan crosstown connection, permitting convenient transfers from one line to another, and serving the most densely populated sections of your great city. These extensions are among those recommended by the board of rapid transit railroad commissioners as far back as 1905, and there is no question as to the practicability of their construction and operation, nor in my judgment as to their profitable operation, and as the necessity for the construction of these extensions to the city's subway is so apparent, I am gratified at the hope of some progress. While as a general proposition I am in favor of private capital being provided for subways, and always with the right for the city to acquire the same, yet under present financial and business conditions, and because these are extensions to the city's present subway, necessary to round it out as a complete system, coupled with the right of the city to obtain possession thereof on short notice, and the fact that they will undoubtedly be profitable in their results, I believe that the idea for the city to raise the capital for these extensions is a sound, economical and justifiable proposition."

August 1, 1910, Mr. Chairman, and the first proposition that the city money should go in was December, 1910, and it surprised the comptroller, according to his report of January 5, 1911.

"In addition to the present transit demands, the Pennsylvania Railroad Company will on September 8th open and operate its station at Seventh avenue and Thirty-second street and the four tunnels to Long Island, bringing passengers from the boroughs of Queens and Richmond, and the necessity for subway accommodations will become more imperative than ever. This station will be one of the important centers of New York City, where great numbers of people will daily concentrate and will require prompt distribution to all parts of the city.

We have with you a deep interest in the subway development and are not merely critics or observers of the situation but have given the matter serious consideration for several years; and our own system, including the Long Island Railroad Company, has spent over \$125,000,000 for the improvement of transportation facilities in and adjoining New York City. The largest part of this expenditure has been made in providing convenient transit in

and out of the boroughs of Manhattan, Brooklyn and Queens, and further expenditures are being made for the New York Connecting Railroad, to form a line from the New Haven System in the Bronx. In making these large expenditures we have aided in improving the commercial, financial and industrial condition of the city and State, and materially added to its taxable values, and we relied upon an up and down town subway with proper connection for the East Side and reaching Brooklyn being provided, because the greater number of passengers using our station will be citizens of New York City traveling daily to and from Long Island, and its citizens will also use it in reaching New Jersey and other States. Any evidence, therefore, of progress in this urgent matter is of the greatest interest to us, but its greater importance is its necessity and utility to the city at large.

I do not doubt that the plans submitted, which are not confined to the extensions of the present subway, to which I refer, may contain some features which prevent unanimous approval and adoption of the entire proposition, but a failure to proceed at the earliest possible moment with that part of the plans about which there is no question, and thereby also fail to provide rapid transit facilities for the city to and from the Pennsylvania station and tunnels, which represent such a large expenditure of private capital and command universal public approval as by far the most important addition to transportation for the city of New York since the opening of the present subway, would be obviously calamitous to the future interests of the city.

On a final review I feel it will be conceded that the construction of a separate subway paralleling the existing one on the east side of Manhattan south of Forty-second street would not appear to be justified at the present time when the same or even less money can be applied to provide a new four-track subway on the west side below Forty-second street, serving a new section of the city as well as the imperative needs of the public at the Pennsylvania station; furthermore, the construction of an independent subway would tend to indefinitely postpone the logical and necessary completion of the present subway system. The mayor and the Public Service Commission are entitled to great credit for making some progress with this difficult situation, giving evidence that they ap-

preciate it can be relieved and properly gratified only by actual subway construction at an early date. The problem will never be any easier to solve; any criticism that now exists will be negatived by the actual building of subways, and is slight compared to that which must inevitably be borne if relief is not properly undertaken. I have full belief that you have the courage of your convictions and will proceed at once for the betterment of the city and its citizens and the wide area of the whole country which acknowledges New York City as its business and recreation center.

Summing up the situation: The matter of immediate importance is to complete the present subway system, giving the citizens two substantially straight four-track subways, one on the east side of the city and the other on the west side, between the Harlem river, the Battery and Brooklyn. These two lines being connected at Forty-second street by the existing subway in that street, and operated with a shuttle service so as to give free and convenient transfer between the east and west sides of the city.

The advantages of the proposed extensions of the present subway of the city are that compared to any other routes; they can be built for very much less money; in a much shorter time; they are practical to operate; they will no doubt be profitable from the start; will complete the present subway, and as a result the city will own two straightaway subways on the east and west sides, and into Brooklyn and the Bronx, permitting convenient transfers; will give the city a share in the profits and open up a method whereby the city can obtain possession, under fair conditions and on short notice, of subways built by its additional investment; will give greater relief to a wider area than any other lines proposed; will avoid the waste of capital that a duplication of the present subway on the east side would occasion until the present system has first been completed and has reached its capacity; will serve the large numbers in the territory on the lower west side of Manhattan and the needs of the traveling public at the new Pennsylvania Station, the pressing importance of which I feel sure will be realized by the citizens immediately the station is opened for traffic; will not prevent any future subway developments that the city may require, but first completes the work the city now owns by the most necessary, logical and profitable extensions.

I cannot conceive of any plan for the city's subway extensions which will bring greater benefit to the citizens or for which more can be said in their favor than those I mention, and I trust that prompt building of these subway extensions will be announced in the future."

Now, do you recall, it slipped my mind, just what the mayor's attitude was on that proposition of December 5, 1910? Did he support it?

A. That is the one in which — in favor of which he offered his minority report.

Mr. Moss, did I understand you to say the December 5th offer was the first one in which it was proposed that the city money should be put? It was July 5th — undoubtedly concerning the July 5th proposition, that Mr. Rea was writing on August 4th. That offer never had much attention paid to it. That is the one that I have already told you — yesterday — was sent to the mayor and a copy of it afterwards sent to the chairman of the Public Service Commission.

Q. Did you know that the Pennsylvania Railroad had communicated with the mayor in favor of that offer of July 5, 1910?

A. No.

Q. I think that never has been known. Did you ever hear or learn or know that the Pennsylvania's attitude to this matter was in part procured by Mr. Berwind, who was interested in the Pennsylvania Railroad and who is also a director of the Interborough? A. No. My first knowledge of the active interests of the Pennsylvania Railroad is contained in the letter from Mr. Rea to Mr. Mitchel which I have quoted in full in my statement of yesterday.

Q. Did Mayor Gaynor ever mention Mr. Berwind to you? A. No, I don't think so.

Q. Now, here is another letter, comes October 18, 1910, by the mayor to Mr. Hyde:

"I beg to enclose to you a letter of Mr. Rea. Will you please look into the matter and have it all in shape and let us get it through as promptly as possible?"

I don't know what that relates to. I merely read it to show its relation to the subway matters. A. What is the date?

Q. October 18th. Here is another one, dated October 18th, by the mayor to Mr. Rea: "Your favor of October 14th is at hand and I shall have the matter attended to." Then one of December 14th, by the mayor to Mr. Rea: "Your favor of December 13th is at hand, and I shall see that the matter is expedited as much as possible." I have not been able to find what they refer to. A. You will find they had nothing to do with subway matters.

Q. There were some other reasons? A. There might have been some other matters pertaining to the chamberlain's office.

Senator Thompson.—I have got a matter here that bothers me. This July 19, 1911, matter that was to be acted upon — was the proposal dated July 19th by the Interborough an acceptance of a proposal made by the city to the Brooklyn Rapid Transit? The B. R. T. having accepted it, those two things were considered together?

A. No, on June 13th the transit committee submitted its report upon the dual subway contract system and advised that contracts be made with the Interborough Company and the Brooklyn Rapid Transit Company on the terms proposed in that report. Also advised that if the Interborough Company should decline to accept a contract on the terms proposed, the lines which would have gone to it should be given to the Brooklyn Rapid Transit, where they could be properly given, provided the Brooklyn Rapid Transit agreed to the terms of this report of June 13th, and vice versa. If the Brooklyn Rapid Transit Company declined to accept the offer contained in this report and the Interborough Company did, then the lines that would go to the Rapid Transit Company should go to the B. R. T. On June 18th the B. R. T. sent in what was practically an acceptance to the city and it was proposed that a contract carrying out that acceptance should be prepared. The Interborough declined absolutely to accept the offer made by the city and the Interborough therefore went out of the operation entirely. Then it was that Mr. Grout appeared as the counsel of the Interborough and then it was that negotiations looking to a reopening of the city's relations with the Interborough were resumed. That led to this offer of July 19, 1911.

Senator Thompson.—That is where we were before. You didn't have a B. R. T. proposition.

A. That had not been acted upon. As I stated in my statement of yesterday, Mr. McAneny and I agreed before the meeting on July 20th that when the Interborough offer was declined as, of course, we knew it would be from the votes that were already stated to be against it, that we should forthwith vote to approve the contracts for four sections of the Lexington avenue route which would go to the Brooklyn Rapid Transit. The contracts were approved the next morning and I certified the contracts the evening of that day.

Senator Thompson.—This offer of July 19th first provided that the earnings on proposed new subways and existing subways should be pooled, and you first take out operating expenses. Now, that is like the one that was later accepted.

A. Necessarily, in that respect.

Senator Thompson.—Second, for compensation, then for renewals and taxes and insurance and rentals—all that is the same. Then it provides that there shall be retained by the company during the entire period of the contract 5 per cent interest and 1 per cent sinking fund upon the capital contributed by the Interborough by proposed and existing subways and 3 per cent as compensation to the company for pooling the receipts. That is what you mean by the 9 per cent.

A. Five, one and three.

Q. That was figured at \$48,000,000. That was all the preferential the company was to get. A. That was the preferential business.

Q. That was the limit of the preferential under this proposition. Then the city comes in for interest for sinking fund and part of the capital invested by the city.

That doesn't reconcile this new contract because the new contract provides, after you get through the taxes, insurance, rental payments and operating expenses, and so forth, and all those things, it provides .6 per cent to the company and then 8.76 to the company. Is that correct? A. No, the 6 per cent is part of the 8.76.

Mr. Quackenbush.— There is no provision for 8.76.

Senator Thompson.— Where is the contract? I want to understand this.

Mr. Moss.— The 5 per cent plus the 1 per cent plus the six million dollars figures up 8.76 and that is the reason it was put in the contract at 8.76. That 8.76 is percentage upon the capital of 2.76. It was figured out 5 plus 1 plus 2.76. That figure was put into the city's preferential so that it might have as much.

Senator Thompson.— This new contract provides the rental first that they take out the rentals from the city under Contracts No. 1 and No. 2. Then the rental payable to the lessee which is identical with this contract here, then the taxes, then the expenses, then the 2 per cent for maintenance and then the 5 per cent to make sort of safety valve or just about that. Then you come down to the six million three hundred and thirty-five thousand dollars. That is the preferential and in addition to that you get 6 per cent.

A. That is right. And the \$6.335,000 and the 6 per cent average 8.76 per cent.

Senator Thompson.— On what?

A. On the old and new investment of the company.

Senator Thompson.— That is different. This 9 per cent here was only figured on forty-eight million.

A. No.

Senator Thompson.— That is what it says. I understood the amount of capital in use contributed is the sum of forty-eight million. It is to be cumulative and shall be adjusted on a yearly basis as a part of its capital investment. Now, that six million dollars is about 8.76 per cent on seventy-two millions and I figured all the time that is what it was on. That is, contribution of fifty-eight million and the cost of the third tracking. The 8.76 per cent is about the interest on about what the Interborough would have invested in subways and their third tracking equipment, amounting to approximately seventy millions.

Mr. Quackenbush.—That point you are discussing was brought up before, from the time that the Public Service Commission took exception to the statement.

Senator Thompson.— You don't mean to say this offer of July, 1911, carried with it the idea that you were to get 9 per cent on these surface lines and all elevated lines.

Mr. Quackenbush.— No, not at all.

I am trying to make a statement. If you will let me make it, it will probably help you.

Mr. Moss.— I am holding my hand now on the article written by Delos F. Willcox on the New York subway contracts. He knew something about it, and he says: "The \$6,335,000 preferential to the company represents something over 13 per cent on the company's present investment. When coupled with the 6 per cent upon new money immediately to be furnished by the company, this preferential payment is figured out as 8.76 per cent upon the entire amount of capital to be invested in the enlarged system prior to the beginning of operation in 1917."

A. The Interborough offer of July, 1911, was this: "The balance of the gross receipts shall be applied as follows: (a) There shall be retained by the company during the entire period of the contract an amount equivalent to 9 per cent upon the capital contributed by the Interborough to the proposed and existing subways. It is understood that the amounts of capital contributed by the Interborough Company to the existing subway as of June 30, 1911, is the sum of forty-eight million and twenty-nine thousand six hundred sixty-eight dollars. This 9 per cent return is to be upon all the capital furnished by the Interborough during the entire period of the contract and is to be cumulative. It is to be 9 per cent upon the increase in the old subways and upon all the new money furnished." Now, there is a copy of their offer and there is all there is to it. Now, instead of this 9 per cent, the contract finally made allows them 8.76 per cent.

Mr. Schuster.— Of the same capital?

A. Practically, yes.

Mr. Moss.—It has been suggested by some testimony here, Mr. Prendergast, that the dual system is overloaded with extensions some of which are in very unprofitable territory not likely to be profitable within ten years and that when these extensions are all operating the trunk lines will be more congested than they are now. What is your opinion on this?

A. Well, now, frankly, I don't think my opinion on that is worth a great deal. I have consulted the opinion of the engineers. I believed them to be competent and they say it is not so. The trunk lines will be able to accommodate the traffic.

By Mr. Moss:

Q. Don't you believe it would have been possible to carry out this dual contract by starting on the trunk lines and building out towards the extensions and taking them up without such a large initial expenditure? A. Mr. Moss, one of the objects of making this contract from the public point of view, from the public demand, was to build these extensions—the extensions are the things for which there was a public demand.

Q. Are you able to tell us what the city loses on the Center street loop? A. I couldn't offhand. I will be very glad to furnish you with the figures; the first few months it stood up in very good shape, but there has been a deficit there.

Q. The Fourth avenue subway is in the same condition.

Senator Lawson.—Do you include in that connection with the subway that \$96 a day?

Mr. Moss.—I'd like to get the comptroller's knowledge on the whole new proposition. Do you think it was justifiable from the standpoint of financial policy for the city to stand for the commission of 3 per cent on bonds of the Interborough which amounts practically to the city paying the expenses of the Interborough selling its bonds?

A. I think it is good financial policy, Mr. Moss, to allow in a transaction of this kind the cost of obtaining the money to be charged to the cost of the court.

Q. Was that carefully discussed in the conferences? A. Very carefully, indeed.

Q. In connection with the prospect that the bankers would have large balances on which they would get interest. A. It was very, very carefully discussed.

Q. And also with the prospect that there would be a good deal of money made because the bonds were taken at 93. A. Yes.

Q. Ninety-three and a half. A. Yes. The allowance of debt discount is acknowledged as being a perfectly legitimate charge. It would practically allow the Interborough to pay a heavy fee.

Q. Speculative interest for obtaining its own money. A. The company had to borrow the money and it cannot borrow the money on any other condition.

Senator Thompson.—That was not provided in this offer of July 19th, was it?

A. The allowance of debt discount is not reported in the contract until June 17, 1913.

Senator Thompson.—You won't find it in this offer.

A. No, in a contract to be made, based upon that offer, it would be included.

Mr. Moss.—It has this relation to these unprofitable extensions that the city has borrowed for the railroad at 6 per cent to construct those unprofitable extensions.

A. What do you mean by that; the city has borrowed for the railroad?

By Mr. Moss:

Q. Isn't that practically the result of it? A. I don't see it at all. The city agrees to contribute so much money and the road agrees to contribute so much money. Of course there is a difference in the way —

Q. It is charged up so that it really pays — A. Don't say "the city is charged up —"

Q. Yes, but it is. It comes out of the city's share. A. Not necessarily. Charged to construction. It does not matter whether it is the city's share or the company's share. The company agrees to contribute \$58,000,000 for construction.

Senator Lawson.—Must the city furnish all the amount over \$58,000,000 that may be required? That is part of the contract.

A. Surely it would; that is part of the contract.

Mr. Moss.—Does that accord with your financial judgment?

A. It does; yes, it does.

By Mr. Moss:

Q. You gave willing assent to that? A. Absolutely.

Q. Do you know of any similar proposition to lease sums of money that the city has ever put through? A. I don't know of any similar proposition that the city has ever put through of that kind. It is entirely without precedent.

Senator Thompson.—There wasn't anything in this offer of July 19th that comprehended that.

A. No, Mr. Thompson, I have already told you that offer of July 19th was, or rather the form of it was, to cover the general outline of a contract. Now, any contract to be made with the Interborough which was based upon that offer would have contained the allowance of this for debt discount.

Mr. Moss.—But, Mr. Prendergast, this financial arrangement which we have just lightly touched upon, I guess sufficiently for it to be understood, in the record, the results in giving a very great financial advantage to the Morgan house and to the Kuhn-Loeb house. Now, do you feel that the subway situation was so tied up to the Morgan interests so far as the Interborough was concerned and so tied up with the Kuhn-Loeb house so far as the Brooklyn Rapid Transit Company was concerned that what those people demanded would have to be allowed if the matter was to go through?

A. No, I never felt that way about it at all. I was not interested in relations, I have already told you, of the companies to their bankers.

By Mr. Moss:

Q. I know, but didn't you think these terms were practically made by the bankers? Wasn't it so stated to you? And that there

was no hope of carrying these transactions through and getting the money that was required unless these bankers were considered? I gathered distinctly from Mr. Morgan's testimony that he was willing to admit that he had been looked upon for many years as the financial representative of the Interborough Company and the Interborough plus himself was invincible. In other words, that when it was known that Morgan and the Interborough were tied up to this proposition, and would stand by it and fight it through, other men would stand off and they would have the inside track and nobody to dispute it with them. A. What other men outside would do in a case of that kind I don't know, but I do know that the fact that the Morgan firm or any other firm or the Smith firm or the Johnson firm was associated with the Interborough would have no influence whatever in carrying through a proposition unless the terms of the contract were such as to meet the wishes of the city authorities.

Q. It is generally thought that you have shown considerable financial ability. I have a right to ask your opinion. If you had made up your mind, as the comptroller of the city, that it was necessary for the city's best good to put through this subway proposition, wouldn't you feel yourself bound to do so? Indeed, didn't you feel yourself bound to carry it through, even if you had to accept the financial terms imposed or proposed by the financial interests? A. We were dealing with the Interborough Company and the Brooklyn Rapid Transit Company. The terms that those people said they could do business on were stated. We knew these terms were confined by the bankers because we met them frequently in conferences. Consequently, knowing anxious as the city was (and I am not using too strong a word), anxious as the city was to conclude some arrangement with those two companies, it necessarily was compelled to meet those terms as far as it possibly could.

Q. And you knew from the attendance of these bankers that they were interested in the proposition? Did you ever attempt to modify their terms? A. You mean say to the bankers, "You ought to take so and so"? No, we never did that at all.

Q. Did you think there was any use in doing it? A. Frankly, I don't think it was any of my business.

Q. Wouldn't it have been your business to make the best terms you could with the company? A. The Interborough has to take the best terms it can get.

Q. Don't you think they had to take the terms —— A. They can borrow money, but you have to pay ——

Q. Did you ask the Interborough people if they had tried to make better terms? A. I think that was mentioned a good many times.

Q. What did they say? A. They threw up their hands. They couldn't get any better terms; they had done the very best they could. That was what they said.

Q. You see from the testimony, some of which has been repeated in your presence, these banks were doing an important service. They were not contenting themselves with the profit that would come at the end of the transaction, but were charging for it in advance. A. They always do that, Mr. Moss.

Senator Lawson.—Did the city contemplate that the Interborough would pay out such sums as \$50,000 to the bankers and that would eventually be charged up to the amount of money to be put in this general construction?

A. No, the city has nothing to do with the relations between the companies and the bankers and these moneys paid out. Never has. They are not charged up to construction; they are part of the general expense. They will never be charged to construction. They never would have been anyway.

Senator Lawson.—There were some sums charged to construction like this bonus to Mr. Shonts.

A. I have nothing to say on that.

Senator Lawson.—The chief engineer allowed it.

A. You are dead wrong about it.

Senator Thompson.—He swears to it, absolutely.

Mr. Quackenbush.—I say that is not in there. I will establish it in the court when we get there.

Senator Lawson.—What I want to find out is this. If the city officials took cognizance of all these little items, I don't call

\$150,000 a little item or \$500,000, but if the city authorities took cognizance of all these prospective items that might be chargeable eventually in some way up to construction, it would be paid by the city after the company's — railroad company's — funds were exhausted in the building of these railroads as planned.

A. What items do you refer to?

Senator Thompson.— Fifty thousand dollars to the general counsel, for instance.

A. Surely there is a clause in the contract which provides that there shall be certain allowances made under the head of "prior determinations" to recoup the companies for moneys spent prior to the signing of the contracts, but which expenses were for purposes having a direct relation to the making of the contracts. Let me tell you something else. The contract also provides that the city shall have the same right and up to date, as far as prior determinations are concerned, the Interborough has been allowed seven thousand dollars prior determinations on the subway and the city one million two hundred thousand dollars. In the Brooklyn Rapid Transit case it has been allowed two hundred twenty-five thousand dollars and the city two million two hundred thousand dollars. Don't you see that the principle is a principle imbedded in the contract and the only thing to provide against is this, that in these prior determinations no allowances shall be made of important changes. That is all.

Senator Thompson.— Yes, but the prior determinations, Mr. Comptroller, all that go to the railroad are paid first, the city gets the last.

A. We talked that over yesterday.

Senator Thompson.— Do you know if the \$50,000 was not paid prior to the execution of the contracts? It was not incurred by any agreement. He was drawing thirty thousand dollars a year; he was paid a determination after the execution of the contracts. Is there something in the contract that provides for that?

A. There is nothing in the contract but what provides for an allowance made under "prior determinations." As I say, whether

the \$50,000 allowance was earned or paid before the contracts were made, I read some statements to the effect that it was not; it was paid afterwards.

Senator Thompson.—There is no question about that. Because, the Interborough didn't become obligated to pay it until after the contract was signed. The man had been drawing thirty thousand a year and they put over what they call a bonus of \$50,000.

Senator Lawson.—In this million or two million that will be credited to the city, are there any such items in those amounts as there are in the amounts that came under "prior determinations?"

Senator Thompson.—They obligated themselves to pay it after the contract was signed.

Witness.—They are legal expenses, but no bonuses because the city never gives a bonus. The city or the State subjects its officials to an investigating committee after they perform their services.

Mr. Schuster.—Are you familiar with the present method of financing the Brooklyn Rapid Transit?

A. You mean the general outline? I was present at a number of conferences when different features were discussed.

Mr. Schuster.—Were contracts between the New York Municipal and the B. R. T. and between the B. R. T. and the bankers, submitted to you, as one of the conferees, in 1912?

A. The latter part of 1912, I think there were. That is, not in detail.

Mr. Schuster.—Was it the understanding on the part of yourself and your conferees that the Brooklyn Rapid Transit was to augment its debt discount allowance of 3 per cent on the sale of this money by excess interest charges or prepared interest charges?

A. It was understood that the Brooklyn Rapid Transit was to have an allowance made to it because of the fact that it had

borrowed, or made arrangements to borrow on its money about October 1, 1912, and as it wouldn't have any possible use for that money for a long time, through the failure of the city to accept the contracts and ratify them, that some allowance should be made to it. When I get to a subject of this kind I prefer to have all the facts before me. What I say is from general recollection. It would amount to two million dollars. And that later on, during the life of the contract, there is to be some of it, about a million two hundred thousand, returned by the New York Municipal Railway Company.

Mr. Schuster.— It is your recollection that these amounts were discussed.

A. Of course I presume the amounts were discussed but that particular point about the Brooklyn Rapid Transit Company having borrowed its money, I can say it was most exhaustively discussed, but I don't say I was present every time it was discussed.

Mr. Schuster.— As early as July, 1912?

A. No, not until very late in the year of 1912, and I think as late as December, 1912. That is, with me. I didn't attend every conference on this subject. Mr. McAneny's testimony will be more valuable than mine.

Mr. Schuster.— You probably don't remember the financial arrangement that was made to the B. R. T. prior to July 1, 1912?

A. It was quite early.

Mr. Schuster.— Now, wherein does the city become responsible for that.

A. I don't know that I am called upon to justify that. For instance, on June 28th the city said to the B. R. T. by its acceptance of the city's own offer, "we are going to make a contract with you." Now, whether it would take one or two or three or six months to draw a contract was not considered but the contract was not drawn at that time and it was not prepared. I don't say that there is any laxity on the part of the city if the roll was unduly delayed in getting to work; it seems to me it had rather

an equitable claim. If it made an arrangement to borrow its money in good faith on a definite action of the city, and there is no question that the action of the city was such a definite and legal action.

No well managed corporation would think of deferring the arrangements for procuring its money until it had the signed contracts in its hand.

Mr. Schuster.— Wasn't that one of the things that it assumed?

A. Yes, I think it was. Let me say to you I think it was one of the risks that they had assumed, but let me tell you this that was one of the questions which became, in the latter part of 1912 and early part of 1913, a matter of adjustment between the city and the B. R. T. Now, what was there to adjust. The city on July 21, 1911, had practically said to the B. R. T., "we are going to give you the lines that you could operate with your own system, which the Interborough has refused to take, or which it can't take because we won't accept its offer of July 19, 1911," and it had told the road that. Now, it seems to me there was a sort of obligation established between the city and the company. When we opened negotiations, we took away those lines from the B. R. T. Now, I don't know to what extent the B. R. T. was in position to assert its right, legally, because I can't pass on that question — I am not a lawyer — but it was in a position to say, "we are going to insist upon our rights for we have borrowed money to carry out an arrangement you placed before us." Because it was in such a position to assert that right, the question was adjusted in that way, was not, understand me, Mr. Schuster, as I remember it, it was not a clear case of "this is what the road ought to get or must get or has to get; this is what the city ought to get." I would very much prefer that you have Mr. McAneny explain that.

Senator Lawson.— The B. R. T. borrowed forty million dollars, sold the bonds at that amount. They were all ready to do business; suppose that something had fallen down and no contract had ever been made. If it had all been made with the Interborough — would it in your opinion have been the proper thing

for the city to allow this amount to the company to permit it to borrow this money in anticipation of the contract?

A. Senator, this hypothetical question you are asking me — the B. R. T. couldn't have been put in that position because everything was given to the Interborough, because the dual subway system constituted arrangements with both companies. But if, through certain eventualities, no contract had ever been made, then you, as a lawyer, are in a better position to express an opinion whether the B. R. T. would have a ground for action against the city.

Mr. Schuster.— You don't intend us to understand that the B. R. T. was under contractual relations at that time?

A. No.

Senator Thompson.— It couldn't have been until Judge McCall signed that proposition.

Senator Lawson.— This was evidently a compromise between the railroad and the city.

A. I will not express any opinion. You see I am very careful not to interfere with your preserves.

Mr. Schuster.— Do you understand there was an allowance arranged for? Why was that not placed expressly in the contract?

A. It is in the contract, I guess.

Mr. Schuster.— I find nothing there of that nature.

A. Mr. Yeomans finds it without any difficulty. He doesn't have to get a magnifying glass.

Mr. Schuster.— He justifies it under the term of interest. There is a vast difference between the terms "interest" and "allowance." That you can recognize very easily.

Senator Thompson.— Does the city take Mr. Yeomans' idea what is in the contract?

A. Mr. Yeomans' opinion, as the counsel for one of the parties to the contract, is important. I didn't intimate that they were governed or controlled or even influenced by Mr. Yeomans' opinion; I merely stated that it was important.

Senator Thompson.— You should be influenced by the opinion of your corporation counsel.

Mr. Schuster.—Your recollection is very clear that this matter was brought before the conferees late in 1912?

A. Yes.

By Mr. Schuster:

Q. Did you know that as a matter of fact as early as 1912, July, 1912, the B. R. T. had sold its 5 per cent notes on the so-called 6 per cent basis? A. I will not say that was not mentioned in the conferences, but I won't say it was. I don't recall it.

Q. Are you aware that that process of selling a 5 per cent paper on a 6 per cent basis amounted to that approximate two million, and do you know that was discounted out of the paper before it was turned over to the B. R. T.? A. I have seen a statement which purports —

Q. Did you know at the time? A. I can't say.

Q. Did any of the conferees sitting with you know it at the time? A. I can't say.

I don't see any merit in making the man a member of the board of directors because if he is a member of that board of directors, his whole heart and soul should be given to the protection and interests of that company. There will come times when, in a perfectly legitimate way, the interests of that company will clash with the interests of the city —

Mr. Moss.— But, Mr. Prendergast, when new interests go into a company, they secure a place on the board.

A. That is a different thing.

By Mr. Moss:

Q. Is it in principle? A. Yes.

Q. Isn't this a copartnership between the city of New York and these companies? A. Yes.

Q. Is not it easier to prevent an uneconomical expenditure than to chase it after it is spent? A. I can conceive a very vigorous mayor in the future, sitting upon a board of directors of one of these companies. What does he do? He's got one vote. He'll

be out-voted if the others don't agree with him; his word will be nothing at all.

Q. He will know what is going on. A. But that is what the Public Service Commission is for.

Q. It is provided in the contract and very amply provided, that it shall have ample power in connection with operating expenses, and I think in connection with every other question —

Senator Lawson.—The comptroller has the right idea. The Public Service Commission is there to represent the people, but it has not represented the people.

Mr. Moss.—He knows a lot of things that never appear on the minutes.

Senator Lawson.—Does he?

Mr. Moss.—He ought to.

Witness.—Does he? Well now, as a matter of practical experience, he knows less than men outside.

Senator Thompson.—Here is a proposition now that if you are on the board of directors of the Interborough Company, I think you could light your city streets for nothing. You've got excess power enough in your plant in which you are interested, to bring in an income of two million dollars a year. You could distribute that and sell it and, perhaps, if you acted in a business way, you might light your streets with it very cheaply.

Witness.—Don't need to be on the board to find that out.

Senator Thompson.—Don't you do more in representation of a board of directors to bring that about than to examine what they have done afterwards? I don't believe in the principle of having the city represented on these boards. I want to say to you, the city, under a very large number of charters, given to private charitable institutions, is represented on the boards of directors and trustees, and a great many others by public officials, but they never attend their meetings, because they never have time. I think there ought to be a provision by which some one is designated by the mayor or comptroller to sit at those meetings; I don't

think the mayor or the comptroller could do it personally. But that is simply my opinion.

Let me ask you this: Do you know of any provision in the contract or anything accompanying the contract, providing a depository for the sinking fund? The amortization funds providing for its safe-keeping or its safe-guard? z

A. There is a special clause concerning the depreciation fund.

Senator Thompson.—I am not speaking of the depreciation fund. There is a 1 per cent fund that is to be accumulated during forty-one years and that has a prospect of building up forty-nine million dollars. Is there any contract by which it is to be safe-guarded?

A. No special depository.

Senator Thompson.—For all I can find in the contract, the Interborough Company on the one hand and the Brooklyn Rapid Transit on the other were not required to hold these funds but there has nobody been willing to hold them and they will be deposited in the funds of the Interborough until necessarily separated and it will be used for running expenses or put out at interest or invested.

A. That might be done.

Q. What else could be done? A. I can't conceive of it being done in this day and generation.

Q. What would you do if it were done? A. If it were done of course there would be a loss there. But I can't conceive of it.

Mr. Moss.—There would be a very nasty thing, for the city holds only a second mortgage. It would be a pretty nasty thing as a second mortgage.

A. When I used the term "second mortgage" it was only as a term. The city will recover those subways under the terms of contract and if the Interborough defaults upon every bond issued it will not forfeit the right to those subways.

Mr. Moss.—You are not only the only one that has used that term, second mortgage.

A. By the way, I covered that question thoroughly in my reply to the objections of some of my good friends on the subway

contracts about a month or so before they were approved. There is nothing to that at all.

Mr. Moss.—Do you think, whether we call it second mortgage or anything else, do you think it would be a good thing for the city of New York to have the bondholders foreclose that first mortgage or the bonds?

A. Well, if you wanted to get a hold of the road, it might be.

By Mr. Moss:

Q. There you are. You begin at once to knock the values. A. Knock the values? Of the road? Of the pillars in the subway? Of the trackage?

Q. If the Interborough defaults there are provisions for going in and taking possession of the contract. We are not talking about the legal effect of the contract. I was talking about the moral effect and the business effect. It can't make any difference.

I can't get it into my head that the city would have any advantage to have the first mortgage go by default. A. It is really to be regretted that I used that term "second mortgage" yesterday. It will now become a part of the nomenclature of the Committee.

Q. Not at all. We pass things just because they come from a gentleman who knows how to talk. But what I want to see is whether the gentleman on the job, drawing that contract, lawyers of the Public Service Commission and the various departments of the city government, your department, the various bureaus in your department, through which this contract must have passed—— A. What bureaus? It didn't pass through any bureaus in my department.

Q. Through you, alone? A. Almost alone.

Q. Did anyone think of putting a provision in the contract providing for the depositing of that 1 per cent for its safeguarding in any way at all? A. I don't recall the matter at all.

Mr. Quackenbush.—It goes to the trustee of the mortgage which secures the bonds. I don't believe the Guaranty Trust Company left it out of the agreement. The amortizing was approved by the Public Service Commission.

Senator Thompson.— The city left it to you and the Guaranty Trust Company to fix it and you fixed it.

Mr. Moss.— I am asking the city people what has been done and they are guessing.

A. They don't guess at all. Mr. Moss, if they started out to do that, they might make themselves responsible for the bonds before they got through.

Senator Thompson.— Your work there was largely to keep down the demands of the railroads ———

A. And to determine upon the general principles of the contract.

Mr. Moss.— Practically three-eighths of that 1 per cent is needed to apply on the bond interest.

Senator Thompson.— You made up your mind to make a dual contract with these two railroads and the city officials spent all their time keeping down the demands of the railroad so far as possible.

Mr. Moss.— I want to challenge the proposition that this 1 per cent may be provided for and if it is provided for by a separate deposit, in the mortgage, then it can't be used for the payment of interest on the bonds.

A. Don't let's misunderstand each other. The sinking fund's allowance to the Interborough is to be taken care of by the Interborough under the terms, I assume, of its trust agreement with the mortgage holder and that is all there is about it, and its duty to itself and to its bondholders, to see that it is done. It is not a part of the city's work. I say to you without reserve, and I am willing to make the statement and back it with my official position as comptroller of New York, that there is no necessity for inserting any such provision.

Mr. Moss.— When, at the end of the period of forty-nine years, it determines that there are several millions of dollars in the hands of the Interborough Company not needed for interest and not needed for amortization, should there have been a provision

by which that surplus should be paid towards the possible deficiency in the city's preferentials?

A. No.

By Mr. Moss:

Q. They just get that. A. Why shouldn't they? It is part of the contract.

Q. I am talking about the making of the contract. I think you are indulging in your thinkings; I think that if there is eight or ten or fifteen millions of dollars left over in that 1 per cent fund, it should then be applied to the city preferentials. A. The only thing to be regretted is that the city didn't have your advice in the making of the contract.

Q. I might have made mistakes; I might have been careless, the same as other folks. A. If you only knew with what absolute confidence the men who are responsible for this agreement have in its integrity, in its working out, well, you wouldn't talk like this.

Senator Thompson.—There is no question but what all the men interested in this contract admire each other because they have all said so as they came before this Committee.

A. Why shouldn't they?

Mr. Moss.—They didn't at all times; sometimes they fought.

A. Well, their admiration is the product of their competition. That is all right.

Senator Thompson.—I put in the record here—call your attention—to this Gaynor testimony. The auditor, sworn before the Committee on the 15th of February, says that "We have filed with the Commission the details of our construction and equipment costs to December 31, 1915.

Q. Everything charged up to December 31, 1915, has been passed upon by the Public Service Commission? A. It has been reported by us to them, and we have filed the information with the Commission.

Q. They have not disapproved it? A. Not so far as we know.

Q. And as far as you assume it has been approved by the Commission? A. They have not raised any objection to it, apart

from the objections raised at the time of the prior determination. They have not raised any objection to any of our items except in infinitesimal small amounts.

Q. As, for instance, this \$125,000 item of Mr. Shonts, that has been passed by the Public Service Commission? A. That is part of their prior determination. It has not been passed upon as a specific item, but the Public Service Commission allowed in the prior determination, \$327,041 of which this is a part."

By the Witness:

A. And as this question has been raised I want to say I have examined the papers used by the Public Service Commission and I find there is nothing in them to indicate that there was any part of the figures submitted by the Interborough showing that there was any bonus included at all.

Senator Thompson.— Did you find an item of \$125,000?

A. No.

Senator Thompson.— You didn't?

A. No.

Senator Thompson.— I don't think you saw the right papers.

A. I saw the papers upon which the Public Service Commission acted and they set up that there were expenses for executive offices, amounting to one million five hundred thirty-two thousand dollars, upon which they asked an allowance and they were allowed about \$150,000 in all. Is that right?

Senator Thompson.— They were allowed an item of \$250,000.

A. Twenty-five thousand dollars went to the elevated prior determination.

Senator Thompson.— If you went through it, I'd like to find out what you find it to be. There is an item in there of \$250,000. The question is, whether it is a bonus or not.

Senator Lawson.— I don't think the comptroller has examined or has been given all the papers that the Committee had before it because I saw those items in there myself and I examined the testimony of Commissioner Turner on the subway question.

Mr. Quackenbush.— I say that the decision will be just as I have announced it.

Mr. Moss.— Don't let's make it necessary for these lawyers to safeguard themselves on our record.

Senator Thompson.— We don't have to try that out.

Mr. Moss.— You have been asking as to possible reasons why this letter of the mayor of July 19, 1911, was written. I find in the mayor's files an interesting correspondence between him and his old friend, Charles P. Avery, and this has been preserved; I find ten days before this letter of July 9, 1911, by C. Augustus Haviland to the mayor.

“ I hope you have read the article in the World to-day on ‘ High Finance in City Subways.’ It charges that in the B. R. T. deal there is thirty-three million dollars of ‘ honest graft.’

Must the Gaynor administration go down in disgrace equal to that of Tweed's time because of this McAneny surrender, reported as approved by all members of the Board of Estimate?

Very truly yours,

C. AUGUSTUS HAVILAND.”

The only part of this letter that interests me is its close connection to the date of the “ damnable rascality ” letter and the fact that there was a continuing correspondence preceding the “ damnable ” letter and succeeding it.

The mayor's letter is February 29th. There is some other correspondence which is not particularly important, but we come to this letter of February 29th in which the mayor writes to Mr. Haviland and says:

“ Dear Mr. Haviland:

You ought to be ashamed to write such a letter. The proposed agreement does not ‘ guarantee ’ to the company 8.76 per cent profit. The proposed agreement does not ‘ guarantee ’ anything whatever in any shape or form. More than this,

the company is not allowed to even retain 8.76 per cent out of earnings. There is no such thing as a contract or proposition.

You are evidently willing to read some black-leg newspaper and take its word for a falsehood. You ought to be ashamed of yourself.

The only agreement about 8.76 per cent is that the city shall get 8.76 per cent on its money before the division of profits is reached. The agreement is that the company shall retain out of earnings the 5 per cent interest which it has to pay on its bonds by which it raises the capital and 1 per cent additional for a sinking fund, the total being 6 per cent.

The company does not get a single cent beyond this unless there is a net profit over everything and that net profit is divided equally between the company and the city.

On the other hand, the agreement is that the city is to be paid out of earnings the interest on its bonds plus 1 per cent for a sinking fund plus enough more to make up in all 8.76 per cent on its capital.

I hate to have to write this to you, because it taxes me to believe that you do not know it already. I am sorry to see you so willing to believe something mean. If you wish it I will send you a copy of the agreement just as it is and let you read it yourself.

Yours very truly,

WM. J. GAYNOR,

Mayor.

C. Augustus Haviland, Esq., 982 Fulton street, Brooklyn,
N. Y.

P. S.— I have put all this in my statement of yesterday, but of course you won't read it."

Then comes one of March 4, 1912, W. J. Gaynor to Mr. Haviland:

" My Dear Mr. Haviland:

Your letter is at hand. You must now certainly know that your statement in your letter to me was not the facts.

Why do you not frankly admit your error? I say to you again that the statement that they are to have 8.76 per cent on the money which they are to put in is absolutely false and you know it.

You mention the Brooklyn Rapid Transit Company. There is no agreement made with the Brooklyn Rapid Transit Company so far."

Then on March 5, 1912, an answer of Mr. Haviland:

"My Dear Mayor:

I have your favor of March 4 and I beg to assure you I don't like to be charged with being untruthful any more than do the hundreds of others who have differed with you.

Will you please explain wherein the 8.76 per cent proposition differs from the 9 per cent proposition which you designated 'damnable rascality' except as to .24 of 1 per cent? I fail to see a difference between a preferential return of 8.76 per cent and an out and out gift.

It is partnership with a corporation and it seems to be robbery of taxpayers to aid a corporation.

Yours very truly,

C. AUGUSTUS HAVILAND."

Then comes the mayor's rejoinder, March 15, 1912:

"Dear Mr. Haviland:

What I complain of is that you don't seem to know a single thing about the subway situation. What is it you object to? You know that I have studied this matter for a long time and my belief is that your views and mine are identical.

It is very easy to simply find fault in a general way, but exactly what is it that you want done or not done? You seem to have a notion that we are going to give something away to the Interborough. You don't get that by reading Hearst's lying newspapers? Nothing is to be given away.

Very truly yours,

W. J. GAYNOR,

Mayor."

Then comes Mr. Haviland's rejoinder, which will be followed by the mayor's answer:

" March 17, 1911.

My Dear Friend:

Because of our long friendship I have refrained from saying much, even though you have so flippantly charged 'ignorance' and untruthfulness, but since you have a second time urged me to speak out I will now say frankly what I have been unwilling to say heretofore and I assure you my opinions are not formed, as you say, from reading 'Hearst's lying newspapers.' You seem to think that the only newspaper disagreeing with you on the subject of the subway matters are the Hearst newspapers.

It is unfortunate that somebody cannot disabuse your mind of this. If you did not furnish the ammunition, the newspapers could not set off so many bombs.

You say your belief is that your views and mine are identical. It is true, dear mayor, they were identical a year or so ago, but if the newspapers of our city are truthful, and I believe they are, then our views are not now identical, but I wish they were and hope they may yet be identical, if not now.

I have found fault not in a 'general way' but because you held up subways with everything planned and put under way, after conferences between you and Commissioner Wilcox and after the expenditure of more than a million dollars in perfecting plans and securing bids, was ready for the letting of the contract.

You no doubt thought good would come out of it but now probably see the error. I have found fault, as I believe the masses of this community have found fault and are now finding fault because you and I and thousands of others had pictured the oppression dealt out to a community by and through a monopoly; you turn from an opportunity to hold the trunk lines of the subway for competition to an earnest effort to create one of the most damnable monopolies ever suggested or planned for a great municipality, to encourage a corporation now boasting of an 18 per cent profit in seek-

ing a 49 year franchise over the whole city in spite of all legislation.

If it pays to do away with long term franchises, to encourage a company seeking a perpetual franchise for four-track elevated railroads, which is a practical confiscation of property along the thoroughfares it seeks to convert to its own uses; to delay for many months and possibly years what was within our grasp and what you had insisted our city was abundantly able to undertake and pay for, not 'all at once' but as the years roll around. This I have found fault with and complained of and regret that I must make it plain to you now.

It seems to me nonsensical to suppose that existing lines will not seek to extend their own lines as soon as they discover that they cannot gobble up the new proposed subway which should be independent of all existing corporations, as was certainly contemplated by its projectors.

If the people had been told in 1909 that it was to be surrendered to the Interborough or the Brooklyn Rapid Transit, I fancy your honor would have been a private citizen to-day.

During the campaign of 1909 I paid particular attention to your utterances and I read nearly everything published over your own signature and I have been compelled to take the same view as is taken by nearly all your true friends and by nearly every newspaper of our city as to what you promised the people of Brooklyn in 1909 and I confess I can't understand how you reconcile those views with your attitude at the present time.

You now turn from the subway originally planned by the old rapid transit commission, if I mistake not, but brought to a seeming head with your approval and the approval of Commissioner Willcox, after you entered upon the mayoralty and you demand a hold-up until the very men you have so frequently condemned as enemies of good government can be conferred with and you thus surprise all the friends who have been true to you, demoralize a community and set all the suburban real estate speculators to the devising of schemes to enrich themselves through new plans for subways not previously under consideration.

You must say 'untruthful,' or you may attribute to 'ignorance' as much as you like, but these are facts heralded by all newspapers other than such as represent corporate interests and known and read of all men in this community.

What is the use of a people turning to new schemes for subways when those to which we have all given our support and encouragement in the past must be abandoned, to dicker with men we have denounced as unworthy of respect and as men who could without compunction, sap the life blood of a people to enrich themselves?

Of what use is it to turn backward to such as these? Your honor has not yet explained other than that a single fare might benefit a few people even though it be over roads almost parallel.

Now I hope your honor will see from this that I am one of those who believe in keeping promises and not running off to encourage schemes.

Your honor well knows as well as I know that we gave the people to understand, or that we gave an impression that we were sincere in our advocacies of a certain plan of subway. We are bound as honorable citizens to adhere to those impressions thus conveyed to a community without harping or quibbling as to the form of pledges. The impression was conveyed, as you and I know, votes were secured through those impressions thus conveyed and as honorable men you and I are bound to stand for them whether they be considered real pledges or not.

Now, what do we see in the community as a result of dickering? A corporation with millions of dollars in its makeup (as has been disclosed by your honor year after year) spending thousands of dollars through the press to create public opinion in its favor, coming to the plant with a desire to add another hundred million dollars to its debt? Possibly to deal out a great part of this to a favored few; now offering to divide its profits with the city and if dividends on water of the city will aid in confiscating the property of the people in perpetuity along public highways and aid it in its vast scheme to grasp additional franchises and this seems to be the municipal ownership idea.

Yet possibly your honor is not in favor of this Brooklyn Rapid Transit proposition.

Thus month after month has been wasted and years are likely to be wasted if you adhere to your present attitude, the turning aside from the original path, which, turning aside it seems to me is so unfair to your fellow men who trusted you implicitly.

I can't go into a discussion of new schemes while we are morally bound by pledge, or if you prefer it, impression conveyed to the common people during a political canvass and confirmed by subsequent action on the part of our officials pledges or impressions now turned aside to deal with men who had denounced as traffickers in the life blood of a people.

I am for standing by pledges, not for dealing with men who have proved faithless. I am for *real* municipal ownership, paying as we go, not *shamming* municipal ownership, dealing in futures, and I hope you now understand my position as to subways.

We can save the city for its people by a fair, manly course. We can turn it over to jobbers if we are unfaithful to the trust reposed in us. I am in part responsible to the people for pledges made and I feel deeply the seeming turning of our officials from the straight paths to devious ways leading to confusion and what seems collusion on the part of the public officials, with forces we have stigmatized as unworthy of confidence and support.

Thus I answer your request, while I remain

Very truly yours,

C. AUGUSTUS HAVILAND.

P. S.—I have written thus plainly, not because I have been charged with ignorance and untruthfulness but because you asked me to make a plain statement."

The mayor's short response is dated March 21, 1911:

"Your long letter has been read by me and I can only say that I regret to be confirmed by it that you know almost

nothing about the subway situation or the law of it or the financing of it.

I regret also that you should say that I have broken a promise; except that I value as an old friend I should resent such a false statement in a suitable manner.

I have made no promise whatever to anybody on this earth in public or privately with regard to what subway routes I should favor, and you know it.

Unless you are willing to be misled by forgers and falsifiers.

Very truly yours,

W. J. GAYNOR,

Mayor."

I have also found in the mayor's files several letters indicating his closeness to the Interborough Company. For instance, there is a letter of April 26, 1910, addressed by Mr. Shonts, president, to Mr. Gaynor, mayor. This letter goes on to say:

"My dear Mr. Mayor:

I enclose you herewith copies of two bills that were introduced by Mr. Becker on April 18th and referred to the committee on railroads; first, an act to amend the rapid transit law relative to acquiring easements for the construction of rapid transit lines; second, an act to amend the railroad law so as to provide for the transfer of the property when the existence of a railroad corporation ceases.

The first of these acts is designed to enable the elevated railroads in the city to proceed expeditiously with the construction of third tracks. It the public authorities should determine that it was advisable that the capacity of the elevated lines should be increased.

Then following an argument upon that subject, 'The second act referred to is designed to pave the way for the operation of the Steinway tunnel.'"

Then following a discussion of the second bill. The answer of Mayor Gaynor to Mr. Shonts is attached to it, dated April 28, 1910, and says: "I thank you for your favor of April 26th

and shall take the matter you mention into consideration at once."

Another letter of Mr. Shonts to Mayor Gaynor is dated June 28, 1910, and proceeds as follows: "Permit me to call your attention to bill introduced in the Assembly on June 27th, 1910, by Mr. Hinman, to amend the tax law, section five, so that it will provide that every corporation owning or operating any elevated railroad or surface railroad or other railroad not operated by steam shall pay to the State for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, within this State, an annual tax which shall be 1 per cent upon its gross earnings from all sources within this State and 3 per cent upon the amount of dividends declared or paid in excess of four per cent upon the actual amount of paid-up capital employed by such corporation."

After a discussion of the bill, Mr. Shonts writes: "It seems to me that such legislation is not in accord with the present public opinion of New York City and that it may retard subway construction. If you agree it may be well to communicate immediately with the senators and assemblymen from New York City so that such legislation may not be passed in the hurry of a special session without consideration of the wishes of the people of the city."

I now put in evidence the article in Pearson's Magazine for May, 1909, written by Mayor Gaynor, entitled "The Looting of New York" which has been referred to frequently in the hearing.

"On the long and narrow island of Manhattan, and extending northward into the territory of the Bronx, are the most valuable street railroad routes in the whole world, for obvious reasons. You only need to look at the map and consider the population to see it. The railroads over them yield by far the largest revenues of any street railroads in the world. And yet for now more than two years they have been in bankruptcy, and operated by a United States court through receivers appointed by it for that purpose. And why? Simply because the fixed charges of interest on the bonds and guaranteed dividends on the stocks issued by the companies owning and operating them

finally grew to be so great that the enormous revenues, ever increasing with the increase of population, were no longer sufficient to pay them. They were ample to pay interest and just and generous dividends, several times over, on all capital invested by these corporations, including generous profits and bonuses to the promoters and builders. But bonds and stocks over and above capital invested, were piled up by exploiters, issue upon issue, and layer upon layer, year after year, by this device and by that, by turning this legal corner and that, until their total became so vast that the interest and guaranteed dividends on them could no longer be paid by the revenues. The result was bankruptcy, the shrinkage in market price of these stocks, and a cruel loss to thousands of honest investors who had supposed it entirely safe, under the sanction of the civil and criminal laws and their enforcement, at all events, to invest their money in the stocks of public properties so valuable and safe if properly administered. An issue of \$52,000,000 of stock by the Metropolitan Street Railway Company, which had been eagerly purchased at advancing prices, on the basis of an alleged guaranteed dividend of 7 per cent per annum for 999 years by another railroad company to which the said Metropolitan Company was leased for that everlasting period, made the most of on the stock market, fell from over \$250 to \$16 a share and is now quoted at about \$25 a share. An impending mortgage foreclosure may depreciate it still more, or wipe it out altogether. The company that made the guaranty scarcely owned a steel rail or a stock of wood in the world, and was practically without assets or resources. The public jumped like a trout for a stock advertised to have a dividend of 7 per cent per annum guaranteed on it for 999 years, without pausing to see who the guarantor was and what the guaranty was worth. The stocks of others of these companies, bought also at advancing prices above par, fell grievously. When a survey of the ruins was had after the crash, it was found that the 'financiers' whose operations caused it were not owners of any considerable amount of these stocks. They and their like have a maximum, you know, that a fool is born every minute to buy such stocks, while they issue and sell them and pocket the proceeds. The ignorance of the public is said to be one of the safest things to trade on.

And yet the 'financiers' and exploiters who did this thing are not to be blamed too much for it. Some of them are men of good heart — tip-top fellows who pray in church, give in charity, and with whom you could live and get along first rate. They are 'the soul of honor' as some do say. They are to be judged, to some extent, by the general moral tone of the community in which they live and scheme. The community and its low, base, vulgar and corrupt government are primarily to blame. No voice of public authority in the city — of mayor or lesser officials — was raised against what they were doing. Instead, those in chief rulership over the city, and the bosses whose mere despicable, harlot-like tools and puppets they were, were in it up to the armpits, and several of them are now living the lives of millionaires — very vulgar little pitiful millionaires — some of them abroad and some of them here, as the result. And now that is all over, there are many people among us to whom no misgivings of their own honesty and respectability have ever occurred, who look upon it rather with a lenient shrug of the shoulder than as degrading to an educated and intelligent community.

And the end was the natural outcome of the beginning, and of the stupid policy adhered to in respect of our street railroad routes so long, if, indeed, there can be said to have been any policy at all concerning them. They were bestowed as gifts in perpetuity by government to corporations, one after another, instead of being leased for reasonable terms of years, with or without rent, but always with a regulation as to fares, based on revenues, and on conditions for future leases or renewals, or the future resumption of them by the city, which would insure the safety of all capital actually invested by the lessee companies; the same as the city did with the ferry routes from the beginning, and as is the method in Europe generally, and in parts of this country, with street railroads. All of the surface street railroads in Boston, for instance, are built and operated under permits, or franchises (if we must distract ourselves with the big name which is in vogue), revocable at will by the public authorities who granted them. There is no permit (or franchise) in perpetuity to be bonded and stocked year after year, over and above actual investment, as it grows more valuable with the growth of

population. And yet people who are rated as sensible declare that capital would not be invested under such conditions. They say that a perpetual right or franchise is necessary to get the necessary capital. It serves, rather, to deter capital in the long run. What investors need to be assured of is that bonds and stocks will be issued to the amount of the money invested, and no more, and then capital will come forth for such enterprises many fold. But when there is a perpetual franchise to serve as the basis of bond and stock issues, over and above capital invested, there is a perpetual temptation to issue them by hook or by crook, and the honest investor is made the victim of the over issue of such 'securities.' And what the community should always be assured of is that as the earnings of such companies grow so large that the dividends are higher than should be paid according to fair dealing and good conscience, new bonds and stocks should not be clapped on so as to make the dividend rate lower but that instead the rate of fare should be lowered to produce that result. The same people are now declaring that private capital would not build underground roads in the city of New York; but once it should become definitely known that the city would no longer build them, for private capitalists to immediately take them, and run and exploit them, as was the case with our great subway, the contrary would soon be made manifest. Why should private capitalists build them so long as the city will do so and run them over to the private capitalists for terms of years so long as to be practically forever, and on terms of rent short of a gift? What will our Manhattan subway be good for at the end of the seventy-five years for which it has been almost given away, after being built by the city wholly by the city's money at a cost of \$44,008,655.91 and \$4,136,382.62 in addition, paid for real estate easements, terminals and the like? It will be obsolete. Napoleon Bonaparte had been dead about seventy-five years the day it was opened; and see the changes wrought during that period of time. Such a period means forever even to all but a few of the babes born at its beginning; and yet we have many apparently intelligent people who say so lightly, 'Yes, but the city will have the subway back in seventy-five years.' You would think they had seventy-five years, and as if the subway is to be relatively and actually just what it is now at the end of that period.

If the city is to build the subways, it should own them absolutely the day they are completed and opened, without any one having any strings on them whatever, and then be free to lease them out at public competition for the highest rent obtainable for a reasonable term of years, with conditions for the full protection at the reletting of the capital invested by the lessee. If this is not to be done, then turn the whole matter over to private capital and enterprise. For the city — for the tax payers and rent payers of the city — to build them under carefully devised statutes and schemes and contracts in advance, by which they are practically given away, is a pitiful business. Formerly we gave away the right or franchise for our city railroads, leaving the donees of the gift to build at their own expense. The present system in respect of subways is for the city to first build them and then give them away. For my part I think it would be for the best interests of the community for the city to build them all, on a uniform and comprehensive plan. It would only need the expenditure of from \$5,000,000 to \$8,000,000 a year to do it at the present time — that is about all that could be spent in a year with due diligence — and in eight or ten years the work would be fairly complete. There should be a regular fund for the department of subways for the underground streets or roads, the same as there is for all the other departments of the city government. Instead of being a burden, such subways would be a financial gain to the city. To say nothing of the rent from them, every subway built would forthwith more than pay for itself in the enhancement of growth, of industry, and therefore of values which it would cause. The way the matter has been neglected — worse yet, the matter has been frowned on — by those in rulership, over the city has justly excited public discontent, which is a kinder word than distrust, and enables us to attribute such strange official attitude (with justice, no doubt) to error of judgment instead of a greater devotion to exploiters of city franchises and privileges than to the community and the commonweal.

Some good people there are also who are under the erroneous notion that these street railroad companies are in bankruptcy, not because of over-capitalization in bonds and stocks, but because the fare they are limited to by law is too small, and who keep say-

ing so. It is incredible that there should be any considerable number of such a false belief, but there is. One who knows his knee from his elbow should know better. They accept without question the statement to that effect in behalf of the financial exploiters and wreckers of our street railroad corporations which is slyly put forth from time to time here and there where it is not likely to meet contradiction. But the fact is that our street railroad fare of five cents is the highest in the world. Every one has to pay it however short or long his ride. Being the fare for everyone, it is therefore the average fare. When you think of this fact you at once perceive how high it is. The European method is to charge a graduated fare according to the distance the passengers go; a small amount to one going a mile or less, and a gradually increasing amount to those who go farther; and when the average is struck, on the basis of the number of passengers carried, it is found to be much smaller than our uniform fare of five cents. We are constantly told that a five-cent fare is too small for long distances, as in the borough of Brooklyn to Coney Island, for instance, a distance of nine miles from the Manhattan end of Brooklyn bridge, and growing shorter according to where the passenger gets on; but only by persons who seem never to think of the large number of people who are hourly paying five cents to ride a few blocks, or short distances, and who make up the great bulk of those who fill the cars all day and part of the night between what are called the rush hours of morning and evening. The fat goes with the lean, and together they make a result which is anything but lean. The short ride pays for the long. Our five-cent token has come, by its great convenience, to be the equation of transactions for which it is too large in amount, and for which four cents would be a more true economic measure. If our principal token were four cents instead of five, it can scarcely be doubted that it would have become the uniform street railroad fare the same as the five-cent token did, both from convenience and as a just economic equivalent or medium.

But as an article like this must be of little or no value without being specific, the facts and figures of over-bonding and overstocking, of exploitation and spoliation of these routes and franchises, for the vast enrichment of a few at the expense of many

honest people, and to the great detriment of the public service, by which the wrecking and bankruptcy were accomplished, should be now stated. Error lurks in generalities.

The Metropolitan Street Railway Company, which became the nucleus or center of the financial operations which were to follow, was formed in 1893 by the consolidation of three existing companies, namely, the Broadway Street Railway Company with a paper capital of \$1,000,000; the Houston-West Street and Pavonia Ferry Railroad Company, with a paper capital of \$2,500,000; and the South Ferry Railroad Company, with a paper capital of \$150,000. Though the total of the stock of the consolidating companies was, as you see, only \$3,650,000 the new company was organized with a paper capital of \$8,200,000. In 1894 the Metropolitan Crosstown Railway Company, with a paper capital of \$300,000, and the Lexington Avenue and Pavonia Ferry Railroad Company, with a paper capital of \$5,000,000, were consolidated with this Metropolitan Street Railway Company, with an increased capital of \$13,500,000. In 1895 still another company, the Chambers Street and Ninth Avenue Railroad Company, with a paper capital of \$3,000,000, was consolidated with the said Metropolitan Street Railway Company with a paper capital of \$16,500,000 for the new company.

This is the genesis of the Metropolitan Street Railway Company as it still exists. But in 1896 it increased its paper capital from the said \$16,500,000 to \$30,000,000 at a stroke, in 1898 to \$45,000,000 and in 1900 to \$52,000,000. Meanwhile, and including 1897, its bond obligations swelled from a total of \$8,500,000 (which was the total bonded indebtedness of the companies which were consolidated in its formation) to a grand total of \$44,008,788. This aggregate of \$96,008,788 of bonds and stock was more than enough to stagger under, but in reaching it we have scarcely more than arrived at the threshold of the financial operations with the railroads of the boroughs of Manhattan and the Bronx which the purpose is to detail and lay bare.

The Metropolitan Street Railway Company acquired twelve other street surface railroads by long leases, generally for a term of 999 years, and made either directly to it or to some of the companies which were consolidated with it, as hereinbefore

stated, and prior to such consolidation. By the terms of the leases the Metropolitan Street Railway Company, the lessee, was obliged to pay all of the interest on the bonded debt of each leased company, and a stated annual dividend on its paper capital, as rent. The high rate of some of these dividends, and also the amounts of paper capital and the mileage should be noted. When some of these roads were built bonds and stocks were not so recklessly issued as later. These leases, with the rentals they obligate the lessee, the Metropolitan Street Railway Company, to pay in interest on bonds and dividends on stocks, and the track mileage of each company, are as follows: By the Ninth Avenue Railroad Company in 1892, 15.90 miles of track, 8 per cent per annum on its paper capital of \$800,000 and \$2,500 per annum in addition; by the Sixth Avenue Railroad Company in 1892, 11 miles of track, 7 per cent per annum on its paper capital of \$2,000,000 and \$5,000 per annum in addition; by the Christopher and Tenth Street Railroad Company in 1904, 4.11 miles of track, 8 per cent per annum on its paper capital of \$600,000 and the interest on its bonded debt of \$2,500,000; by the Eighth Avenue Railroad Company in 1892, 19.34 miles of track, 17 per cent per annum on its paper capital of \$1,000,000 and \$5,000 per annum in addition, and the interest on its bonded debt of \$750,000; by the Second Avenue Railway Company in 1898, 30.40 miles of track, 9 per cent per annum on its paper capital of \$1,862,000 and the interest on its bonded debt of \$7,000,000; by the Broadway and Seventh Avenue Railroad Company in 1890, 19.33 miles of track, 10 per cent per annum on its paper capital of \$2,100,000 and the interest on its bonded debt of \$9,650,000; by the Central Park and North and East River Railroad Company in 1892, 20.86 miles of track, 9 per cent per annum on its paper capital of \$1,800,000 and the interest on its bonded debt of \$1,200,000; Forty-second Street and Grand Street Ferry Railroad Company in 1893, 8.80 miles of track, 18 per cent per annum on its paper capital of \$748,000 and the interest on its bonded debt of \$236,000; by the Twenty-third Street Railway Company in 1893, 4.54 miles of track, 18 per cent per annum on its paper capital of \$600,000 and the interest on its bonded debt of \$250,000; by the Third Avenue

Railroad Company in 1900, 33.93 miles of track, 7 per cent per annum on its paper capital of \$16,000,000 and the interest on its bonded debt of \$42,560,000; by the New York and Harlem Railroad Company in 1896, 19.52 miles of track, \$402,500 rental on its paper capital of \$10,000,000; by the Bleecker Street and Fulton Ferry Railroad Company in 1893, 8.79 miles of track, \$13,500 rental on its paper capital of \$900,000 and the interest on its bonded debt of \$700,000.

The Metropolitan Street Railway Company also acquired and owned the stock of the following street surface railroad companies: The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, paper capital \$1,500,000; bonds, \$1,500,000; the Fort George and Eleventh Avenue Railroad Company, paper capital \$3,000,000; Thirty-fourth Street Crosstown Railway Company, paper capital \$1,000,000; bonds \$1,000,000; the Fulton Street Railroad Company, paper capital \$500,000; bonds \$500,000. Their respective mileage of tracks is 6.72, 1.6, .96, 1.05.

The excessiveness of the issues of stocks and bonds on most of these leased and purchased roads becomes apparent to any person of fair intelligence when contrasted with the mileage of tracks. For example, the Third Avenue Railroad Company, with 34 miles of tracks has a stock issue of \$16,000,000, and a bonded indebtedness of \$42,560,000, *i. e.*, more than \$1,700,000 a mile! Even elevated railroads are built for \$250,000 a mile. The receivers of the United States Court gave up the heavy load of carrying this company by abandoning the lease. Thereupon it had to be placed in the hands of a receiver by the State Supreme Court, it being unable to pay its fixed obligations. It is also noticeable that in the case of roads on which bonds and stocks had not been over issued to an amount that was thought large enough in this process of "financing" that lack was made up by a corresponding increase in the rate of dividends which the leases bound the lessee company to pay for the term. Five of the leases require the payment of dividends of from 10 to 18 per cent. And then came forth the claim that these contracts of lease were inviolable under the constitutional provision that no act shall be passed impairing the obligation of contracts, and that

for the legislative ever to lower fares, or in any way interfere, so as to prevent the payment of such unconscionable dividends forever (nay, nay, only for terms of 99 years) would be an impairment of the contracts and void. It would also be 'confiscation' these learned 'constitutional lawyers' said. Some of the teeth have been drawn out of that big threat by the recent decision of the United States Supreme Court in the eighty-cent gas case, and in due time it will be without any teeth at all. We do not need the courts to protect us from the confiscation of our property by the Legislatures in this country. Our Legislatures are quite as unlikely as the courts to confiscate property. It is a libel on them and on the people of this country to say the contrary. There is not the least danger of the confiscation of private property by the Legislature anywhere in the English speaking world, if anywhere else. For the people at large to be compelled to pay forever a dividend of from 10 to 18 per cent on even the honest stock of a street railroad on the island of Manhattan, or elsewhere, not to mention stock from two to ten times the amount actually paid in for stock, is just as much confiscation of their property as would be too low a rate fixed by the Legislature, confiscation of the company's property.

Loaded down in this way with its own stock and bonds and the stocks and bonds of the companies so leased and purchased by it, the Metropolitan Street Railway Company now leased itself in 1902 for a term of 999 years to the New York City Railway Company; a little company on the outskirts of the city with a huge paper capital of \$20,000,000, but only one and one-half miles of track. This company agreed by the lease to pay all of the obligations of interest on the bonds and dividends on the stock of the companies which its lessor, the Metropolitan Street Railway Company, had obligated itself to pay, in the way we have already seen, *i. e.*, by the leases to it, and also to pay the interest on the \$44,008,788 of bonds and an annual dividend of 7 per cent on the \$52,000,000 of paper capital of the Metropolitan Street Railway Company which have already been mentioned. It was this guaranty of a 7 per cent annual dividend on the said Metropolitan Street Railway Company stock for 999 years that made it an attractive purchase to those who did not look into the

financial responsibility of the guarantor. It sufficed to them that the stock was guaranteed. In five years the New York City Railway Company was in the hands of receivers, as was stated at the outset. Meanwhile it was the operating company of all of the street surface railroad companies in the boroughs of Manhattan and the Bronx which have been mentioned — and they comprise all that there are unless there be some insignificant exceptions — and was therefore alone liable for damages for all accidents and deaths on the said railroads. Upon its bankruptcy a multitude of suits therefor were brought to a standstill. They are not deemed worth pursuing. A company with no assets except one and one-half miles of track, and that in a remote suburb, is a poor recourse indeed for redress in damages for all the persons killed and maimed for five years on the street surface railroads of Manhattan and the Bronx.

The history of the financing, exploiting, and wrecking of the railroad corporations of the boroughs of Manhattan and the Bronx — the shame of a great city — would be very incomplete without including the overhead roads, and also the underground road built by the city.

The overhead roads were built and owned by the New York Elevated Railway Company and the Metropolitan Elevated Company. Their issues of bonds and stocks were excessive compared with the cost of construction, and other expenses, though by no means so much so as has been the practice of recent years. All decency and restraint in such matters had not yet been cast aside, and the public treated as an overgrown fool, incapable of observing or thinking, if not as a big beast that only ate and slept. But very soon the net earnings became so large that if declared out in dividends the dividend rate would be so high as to attract intelligent attention. The Legislature cannot, as a matter of equity and just policy, suffer a public corporation, *i. e.*, a corporation created and licensed by government to perform a public service for the community, to continue earning an excessive dividend out of the community. To prevent this would necessarily require a reduction of the rate of fare by the Legislature. Means had therefore to be taken to keep down the dividend rate, so that it should not attract attention as being unconscionably high. The

case was the same as the history of all of the city railroads. The bonds or the stocks, or both, had to be increased, so as to absorb the net earnings on a dividend rate that would not be too high, but would look right. This is the method which has run its long course for more than a generation, so easily are many people fooled by mere forms and appearances. The Metropolitan Elevated Railway Company was therefore formed. It did not have a foot of road or anything else on this earth. It was a mere expedient for the creation of more stocks and bonds to absorb the excessive revenues of the two existing companies already named. They now leased themselves to this new paper company for 999 years (all according to law, yea, no doubt). They each received paper shares of stock of the new company, one of them to the amount of \$7,800,000 and the other to the amount of \$7,100,000, with a guaranteed annual dividend of 6 per cent thereon, in exchange for the aggregate shares of stock they were authorized to issue by their charters, namely, \$6,500,000 each. Their bonded debts of \$23,818,000 were also assumed by the new company. Its bonded debt is now \$40,000,000. It had a total paper capital of \$26,000,000. In 1891 this was increased to \$30,000,000, in 1899 to \$48,000,000 and in 1902 to \$60,000,000. Then, being ripe and ready, this new company leased itself to the Interborough Rapid Transit Company for a term of 999 years in 1903, for a rental of 7 per cent per annum on its said paper capital of \$60,000,000 and also payment of the interest on its said bonded debt of \$40,000,000 by the lessee company, and in addition \$10,000 a year. Such, in brief, is the 'financing' of the overhead roads to \$100,000,000 and the fixing of that status forever by a lease guaranteeing the said interest and dividends thereon for a term of 999 years — which lawyers appear to regard as one year short of forever, but which every one else is willing to admit is forever and a day.

This Interborough Rapid Transit Company, lessee of the overhead roads, is the company which operates the railroad in the Manhattan subway. The city built this subway out of its own funds at a cost of over \$44,000,000 for the contract work and material, as we have seen. No dollar of any one else entered into it, although there are many persons who still continue to laud

certain financiers by name for having risked their capital in building it, so fixed is the false notion which was persistently disseminated to that effect. But when it was completed, it belonged to the said Interborough Rapid Transit Company by contract of the city for seventy-five years, *i. e.*, fifty years with a right of an extension of twenty-five years; the rental being that the company should pay to the city the interest ($3\frac{1}{2}$ per cent) on the bonds of the city issued to raise the funds to build the subway, and never to exceed 1 per cent additional thereon, dependent on the company's receipts. The company is not to pay the principal; but the financiers of the company, and the chief officials of the city at the time the contract was made, gave us the consolatory and self-evident assurance, that if a part of the $4\frac{1}{2}$ per cent interest — the doubtful extra 1 per cent — should be made into a sinking fund by the city, and invested and compounded it would by or before the end of seventy-five years have grown large enough to pay the principal. In other words, the city in effect loaned its funds to the company at not to exceed $4\frac{1}{2}$ per cent interest, to build the tunnel the company to have the tunnel when built for seventy-five years and after that the city to have it back instead of the principal of the loan being paid back to it. Or, if the 1 per cent be taken as rental then the subway is let for \$440,000 a year, whereas the lessee company has a gross income of about \$12,000,000 a year out of it from the carriage of over 220, 000,000 passengers a year, and from advertising, rentals and other sources, which means a net income, *i. e.*, after deducting not to exceed 40 per cent for expense of maintenance and operation, of at least \$7,000,000.

The maintenance account of such a road must be comparatively much smaller than that of surface and overhead roads. The roadbed is of the most solid and enduring character, and the wear and tear of the entire tunnel and stations must be small. The cost of maintenance and operation of the overhead roads, with their constantly deteriorating structures is only about 43 per cent of the gross receipts. If we next deduct the interest of three and a half per cent on the city bonds issued for construction, *viz.*, \$1,540,000, there is left a balance of \$5,460,000. If the company be allowed a dividend of 6 per cent on its inflated

capital of \$35,000,000, viz., \$2,100,000, there is still a balance of \$3,360,000. The subway is free from taxation by statute; they looked out for that. But mixed up and tangled as the company is with the other companies, and locked fast with them in the grip of the single ownership of the Interborough Metropolitan holding company (to be hereinafter shown), its surplus now goes to eke out the incomes of other roads for the payment of interest and dividends on their excessive bonds and stocks, instead of being applied to an adequate rental to the city, as should have been done from the beginning. The only capital the company was obliged to invest was for cars, power and general equipment. This was given at the outset as \$10,608,620, but it has increased steadily ever since. The company was capitalized on paper, however, at \$35,000,000 and now had a funded debt of \$35,033,000. No account has been taken of interest on this debt in arriving at the foregoing balance, for the reason that even the \$35,000,000 of capital can never have been spent in the subway, including the extension to Brooklyn, let alone double that amount. It was, of course, supposed by the public to be a purely municipal company, to run the city's subway, as a city enterprise, with no legal capacity to mix itself up with other roads and companies, by purchases, leases and stock transfers, and stock and bond inflations and jobberies, after the manner of the time. But this was a mistake. The subway was turned over to it by the officials without any restrictions in this respect whatever. It afterwards not only acquired the overhead roads, in the way already given, but also seven small street railroads in and about the suburbs of the city, and a construction company, and a realty company which owned a hotel; their total bonded debt being \$18,035,000 and total paper capital being \$9,655,623. It comes hard to think of all this having been organized and perfected by officials acting in the public interest, and in the avowed name of 'municipal ownership and operation.' Said Abraham Lincoln: "You can fool all of the people some of the time, and some of the people all the time, but you can't fool all of the people all the time"—but you can come close to it in a big city that the one who arises in opposition or warning in some emergencies is like a voice crying in the wilderness,

Enough has already been said about the use and value of the subway at the end of the seventy-five-year term. If the city could have it back at the end of twenty or twenty-five years, it might then still be a valuable asset; but did any one believe that could be the case at the end of seventy-five years? The governor of Massachusetts vetoed the act for the building of the proposed new Boston subway by the city and the leasing of it when finished to an operating company for a term of only forty years, such company to pay the entire cost of construction (about \$13,000,000) with accrued interest back to the city in one lump sum in advance on the making of the lease. He showed the scheme to be financially unjust to the city, and, as he said, to 'generations yet unborn.' He had a true sense of what forty years means. Compare that with what has been done with the far more profitable subway of New York City. The term is seventy-five years and the cost of construction is never to be paid back to the city, except forsooth, by the 1 per cent annual rental in the way already mentioned.

If what has been written be now recapitulated, it will be remembered:

1. That the New York City Railway Company acquired control of the street surface railroads of the boroughs of Manhattan and the Bronx.

2. That the Interborough Rapid Transit Company, which operates the subway road, acquired control of the overhead roads, and several small suburban street surface roads.

If, therefore, some one company could acquire these two companies, it would have control of all of the railroads, overhead, surface and underground in the said two boroughs. And that is exactly what happened. The entire stock issue of the said New York City Railway Company, and also all or a majority of the stock of some little suburban railroad companies, was acquired by a new business company (not a railroad company) formed for that purpose, namely, the Metropolitan Securities Company, with a paper capital of \$30,000,000. Then in 1906 a similar business company, namely, the Interborough-Metropolitan Company, with a paper capital of \$155,000,000 and an indebtedness

by bond and trust notes of \$85,000,000, and formed for that purpose, acquired the stocks of both the Metropolitan Securities Company and of the Interborough Rapid Transit Company; and also some other stocks to make the colossal consolidation in one hand complete and absolute.

And then the crash, and the fall of stocks, and the ruin of honest people, and the anguish and distress, and the bankruptcy, and the receivers, and the disgrace, and the disintegration, and the cancelling of the leases, and the stopping of the transfers (for you must know that transfers from one road to another depend by statute on the union of the two roads by a lease or otherwise); to be followed by foreclosures, and strifes, and law-suits, and finally reorganizations with still new issues of false bonds and false stocks, and the same old game over again, do you say? Let us hope not, but that the persons put into office and in rulership over us will stand with a hostile and even fanatic honesty against it. The consolidation is that after all under God's providence the world grows better all the time, though we may not always be able to see it and it may not be true for the moment. Slow growth in all things, physical and mental, is the order of the universe, and only slow growth seems to be good growth. Would that confidence in the schemes of some 'financiers' were a plant of the slowest growth.

It remains to count up the vast total of the bonds and stocks of the companies, great and little, which are included in the scope of this article, so that you may know that the public is paying in fares, or expected to pay eventually, interest on bonds and dividends on stocks, the aggregate of which bonds and stocks is several times what the construction and equipment of all of these roads would actually cost under proper management. In the case of some roads such aggregate is easily five times and of others ten times such actual cost. The vast total of stocks is \$405,882,500, and of bonds and similar securities, \$295,253,411; aggregate of both, \$701,135,911. There are in all 865 miles of track, overhead, surface and underground, used or abandoned. The average amount of bonds and stocks per mile is therefore \$810,000. If even \$100,000 should be allowed as an average for each mile of track, the total would be only

\$86,500,000. The writer knows of trolley roads in cities being built and equipped for less than \$50,000 a mile. Even the double-track Kings County Electric railroad structure in Brooklyn was, as the writer knows, built for \$225,000 a mile. The company was bonded, however, for \$1,100,000 a mile, and had a stock issue of \$3,500,000. Of course it was for all of us to suppose that equipment and general expenses took the balance. The foregoing figures include the stocks and bonds of the two business holding companies which have been mentioned, by deducting which the aggregate stocks and bonds issued directly by the strictly railroad corporations will appear, and a calculation on that basis shows an average of \$500,000 a mile.

Those of us who hesitate to espouse the cause of government control and operation of city railroads may well feel our convictions on the subject giving way on an examination like this of the demoralizing and injurious results of private ownership and operation. How could government do so badly, it may well be asked. It certainly could not issue false bonds and stocks to the extent of hundreds of millions of dollars, or to any extent, for the people at large to pay interest and dividends on as a perpetual tax in fares. I suppose every one has not failed to note the fact, even though most people have, that for now more than two years the street surface roads of the boroughs of Manhattan and the Bronx have been in law and in fact under government control and operation, as has already been stated, *i. e.*, by the judicial branch of the United States government, *i. e.*, by two receivers (or managers, or superintendents, if that may make it plainer) appointed and directed by a United States Circuit Court. We now have government operation right under our eyes, as an object lesson. When one thinks of it he may not be able to answer why similar government managers, or officers, appointed by the courts or by executive authority, should not manage and operate all city railways. Who will say that it would not be for the benefit of the community if the government by its receivers should continue to do so indefinitely with the railroads in Manhattan and the Bronx now in their hands? Would it be better to restore them to those who spoliated and ruined them? When the receivers took charge of these roads two

years ago they were running down at the heel fast. Tracks and equipment were growing dilapidated and archaic. When earnings have to go to pay interest and dividends on false bonds and stocks, they cannot go into improvements. The old cars and tracks have to be eked out to the last. Everything has to be skimped, including wages. The improvements under the receivers are manifest. It has been noticeable during the last few years that in the case of public service corporations which are being run at a loss there is a demand for municipal ownership and operation. The sudden and wholly unexpected belief in municipal ownership and operation in some people becomes violent in prospect of such losing corporations. 'One little ferry over to Brooklyn which was recently purchased by the city of New York is being run by the city at an annual loss of \$313,000. Outside of the few who note the falling of every pin in under-the-blanket city politics, no one knows why the city ever purchased it and gave an ungodly price for it. For the land and its appurtenances \$750,000 was paid by the city, whereas their assessed value for the purpose of taxation was only \$183,000, and we have positive assurance annually from the assessing department that all real estate in the city is assessed at its actual value. Was this property assessed at only one fourth of its value through official favoritism, or was four times its value paid for it? And which wrong on the community would be the greater? If the city is to take and operate public service corporations, no disinterested person will say that it should confine itself to taking the unprofitable ones — and especially at inflated prices. There are at the present time unprofitable ferry companies trying to sell out to the city at enormous prices. Their owners, and some people who call themselves 'reformers' and 'steer' reform movements, but hate every reform and every reformer, and use that word to put 'safe' men, *i. e.*, their tools into office, and to cover their purposes and their tracks, and fool the community, and swindle the city, have an ardent fit in favor of municipal ownership and operation just now. The matter very much needs the watchful supervision of a committee of citizens. If the city buy them it should be at their actual value, and not a dollar more. The poor city is being bled at every pore."

I also read in evidence an extract from another article written by Mayor Gaynor and printed in the New York Outlook for July, 1910, entitled "The New York Subway Situation," the concluding paragraph of which article is as follows:

"A chief and persistent difficulty to negotiations with the operating company seems to be that its directors do not seem to be free agents. Its \$35,000,000 of capital stock is held by the Interborough-Metropolitan Securities Company, a mere business holding company, which also holds the stock of the New York City Railroad Company, lessee of the Metropolitan Street Railroad Company, through which the said holding company controlled all of the street surface railways of Manhattan and the Bronx before they fell most miserably into the hands of receivers three or four years ago, bringing loss and ruin to so many people. This stock of the said operating company (the Interborough Rapid Transit Company) seems to be the only live asset this holding company has. A dividend of 9 per cent annually is paid on it. This dividend is used by the holding company to pay the 4½ per cent interest on the \$70,000,000 of its bonds or debentures which it has out. Its directors do not want this situation disturbed. They fear that if the said operating company should go into new extensions and equipments therefor this 9 per cent dividend might decrease or cease temporarily and bring about a default of the interest on the said \$70,000,000 of debentures. This system of pyramidal finance has wrought many evils with our city railways. Of course, the directors of the operating company are selected by the directors of the holding company, and are therefore subject to their finances and fears—in fine, to their absolute will."

I introduce in evidence the memorandum written by John Purroy Mitchel, dated February 27, 1912, entitled: "Defects of the Offer of the Interborough Rapid Transit Company."

(Copy of same is as follows):

To the Members of the Board of Estimate and Apportionment:

Gentlemen.—While I have always believed that the proper solution of the transit question lies in the building of a new separate and complete rapid transit system by the city and its

operation under city control, I was prepared last July to accept the dual plan as a satisfactory settlement of the question, provided that plan be based upon operating terms such as to give the city a control over the new subways, assurance of fixed charges on its investment and a share of the profits that the new system might be expected to produce. I still feel that an independent city built line is the best solution of the question, but I am prepared to-day, as I was last July, to accept the dual plan upon proper terms.

I am opposed to the acceptance of the present offer of the Interborough, not because it involves the dual plan, not because of the identity of record of this particular operator, but because the offer proposes a bad business bargain for the city and entails an abandonment of the accepted and approved rapid transit policy of the city of New York.

The present offer of the Interborough Company is substantially the proposition of last July, which the board by a majority vote rejected at that time. The form is somewhat changed. Certain minor concessions have been made. In some respects the terms are worse for the city, but in substance, and in fact, the proposition is the same.

The fundamental scheme upon which this offer is predicted, is a practical if not a legal guarantee to the company of its entire net earnings of the present subway, in addition to carrying charges on new capital. It offers to the people of the city the alternatives of perpetual congestion or a subsidization of private investors through the carrying of deficits in taxes. It is directly opposed to the policies of municipal construction by municipal control and municipal profit sharing, approved by popular election and which the members of this board were sent here and expected to carry out.

The defects of this offer are of two classes: those that attack and violate the principles of municipal control and municipal profit sharing; and those that conflict with ordinary business sense and which when understood, I am confident that no member of this board can approve whatever his views upon questions of principle and policy may be. These defects of both classes I propose to enumerate. No one of them is incurable were the company minded to meet the city upon fair terms. If these objec-

tions were met by the Interborough Company, the city would be placed in a position to control a complete and cohesive transit system and to share in the profits therefrom. If that were done I should be prepared to vote for the dual plan, though still believing that an independent system is the better solution.

In justification of an abandonment of the policies that the members of this board were elected to carry out, it has been urged that without the dual plan and an Interborough contract, an adequate transit relief can be had. If in truth we were compelled to choose between this offer and no subways, then perhaps we might be justified in considering a change in that policy. Such, however, is not the fact.

The Broadway-Lexington avenue subway is at this moment under construction. There is absolutely nothing in the present situation to prevent the completion of this trunk line and its extension into the Bronx, Queens, Brooklyn and Richmond. There is no reason why the construction of a city planned and city built system of subways cannot be pushed with all speed, and while construction is in progress, an operating contract can be discussed, negotiated, advertised and awarded. Surely no lack of operators for the most lucrative rapid transit railroad in the world will be experienced.

The Brooklyn Company stands ready to undertake that contract to-day on terms advantageous to the city. If this company or its offer is unsatisfactory, then an open advertisement for competitive bids will bring others. But if the city should find none willing to operate on terms satisfactory to it, then municipal operation is still possible.

While I would prefer not to see the city enter the field of transit operation so long as a private operator can be had on fair terms, I would much prefer to see the city undertake it with its attendant risks and prospective gains, rather than to make a contract with any company now by which the city assumes all the risks and the company absorbs all of the prospective gains.

The very object heralded as the chief advantage of an Interborough contract, the so-called universal five-cent fare, is forfeited by the plan proposed. The essence of this plan is dual operation. The Brooklyn Rapid Transit Company will cover all

South Brooklyn and extend northward to Fifty-ninth street only. The Interborough Company will cover all the Bronx and the northerly two-thirds of Manhattan and extend southward to Nostrand and Flatbush avenues in Brooklyn only. Two fares will be necessary between South Brooklyn and Coney Island or any point tapped by the Brooklyn Rapid Transit Company alone, and northern Manhattan and the Bronx or any point tapped by the Interborough Company alone. This is interesting when we consider how much emphasis has been laid upon the so-called universal five-cent fare.

It is not true that a Seventh avenue line need be lost by the rejection of this offer if the company refuses to modify it in a way to cure the foregoing vital defects. If built by the city that line could be connected at Forty-second street with either the new city-built Broadway-Fifty-ninth street line or with the present Broadway line and with the proposed Steinway tunnel line, under a proper operating arrangement with the Interborough Company.

There should be no misapprehension as to delay in construction. A rejection of this offer need not entail delay. It would mean merely more and cheaper building with city money instead of private capital.

A separate contract with the Interborough Company covering elevated extensions and third tracks and the Steinway tunnel with joint operation in Queens is desirable and can proceed at once in any event.

Much has been said to the effect that the increase of taxable values to be expected upon the adoption of this plan justifies the sacrifices of income involved in this argument. In the first place the increase of taxable values will follow the establishment of rapid transit facilities irrespective of the operator. In the second place, increased values of taxable realty will not offset losses of income, for those increases will be necessary to carry the inevitable capital cost of general municipal improvements always entailed in the growth of localities and the spread of population.

If the city were compelled to choose between the present offer of the Interborough Company and a contract with the same finan-

cial terms as those of the present leases of the existing subway, bad as we all regard those terms to-day. I should not hesitate for a moment to vote for the latter. Under the present Contracts 1 and 2, the city is at least assured of interest and sinking fund upon its bonds. The city is preferred as to that sum, though denied all profit. Under the present offer, not only must the city abandon hope of profit, but interest and sinking fund upon its bond depend upon an increased congestion so intolerable that public policy and the enlightened city administrations that will surely come after us, can never permit it to be attained.

I am opposed to the Interborough offer for the following reasons:

ON FUNDAMENTAL GROUNDS OF PRINCIPLE.

I.

BECAUSE THE PLAN PROPOSED IN THIS OFFER CAPITALIZES CONGESTION AND INSURES, THROUGH THE EXCESSIVE PREFERENTIAL PAYMENTS TO BE MADE THE COMPANY, THAT THE TRAVELING PUBLIC WILL EITHER BE MORE CROWDED IN FUTURE SUBWAYS THAN THEY ARE TO-DAY OR THAT THE CITY WILL NEVER RECEIVE INTEREST AND SINKING FUND ON ITS BONDS ISSUED FOR CONSTRUCTION.

The offer provides that there shall be deducted annually from gross earnings, in the following order:

(a) Operating expenses including depreciation, renewals, obsolescence, taxes, rentals payable to the city under contracts numbers 1 and 2, etc.;

(b) A sum to be paid the company of \$6,335,000 on account of its capital investment in the present subway, to be cumulative;

(c) A sum equal to 6 per cent upon all new capital to be invested by the company, to be cumulative;

(d) Interest and sinking fund upon the city's capital investment plus a further sum sufficient to bring the payments to be made to the city during the entire period of forty-nine years up to an amount equal to 8.76 per cent upon the city's investment, to be cumulative; and

(e) The remainder of gross earnings, if any, to be divided between the city and the company, equally.

Whether the city will ever receive any return from the enterprise, either interest and sinking fund upon its bonds or profit, will depend upon the amount of gross earnings and the cost of operating the road. All other factors are fixed by the terms of the contract.

Likewise, in any computation of the time at which the bonds of the city might become self-supporting, the only factors not definitely fixed by the contract are the same, namely, volume of traffic and the ratio of operating expenses to gross earnings. These two being determined, conclusions will follow as incontrovertible mathematical deductions. Whether, therefore, the city's bonds issued for construction will ever become self-sustaining, and if so at what time, and whether the city's cumulative deficit for interest and sinking fund on these bonds will ever be wiped out, will depend; on the volume of traffic that the new amalgamated Interborough subway may draw; on the maximum traffic of which it may be capable; and on the percentage of gross revenue representing the operating expenses of the system. If these can be determined definitely in advance, we can say definitely whether the city's bonds will ever become self-sustaining, and whether the city's cumulative deficit will ever be wiped out.

The Interborough Company submitted a written estimate on July 6, 1911, that the gross total traffic of the amalgamated Interborough system in the first year of operation — 1917 — would be 425,000,000 passengers. Although this estimate was modified by Mr. E. J. Gaynor, the auditor of the company, during the conferences recently held, to 400,000,000, I have preferred to accept here the more liberal estimate in order to give the benefit of the doubt to the proposed plan in making my computation.

It is futile to speculate as to gross total traffic increases for the combined traffic facilities of the entire city, if there is a point of saturation beyond which the traffic of the amalgamated subway cannot expand without creating congestion in the new sub-

ways, then in that fact is found a good and sufficient reason for rejecting it.

The point of saturation of the new amalgamated Interborough system has been calculated in various ways. All point to the fact that the city can never hope to come out of the contract whole. The City Club and the People's Institute have both made such calculation in various ways and have put the point of saturation at 712,000,000 and 680,000,000 passengers, respectively. Each of these bodies has pointed out that this point of saturation will mean a congestion greater than that existing to-day. Both have pointed out the obvious fact that the carrying capacity of an entire subway system consisting of trunk lines and branches, must necessarily be limited by the carrying capacity of trunk lines.

With this fact in view, it has seemed to me that the fairest, most accurate and most scientific basis of calculation is a comparison of the trunk lines and branches of the proposed amalgamated system with the trunk lines and branches respectively of the present subway, on the basis of the number of passengers carried per car mile operated in each, in order to determine at what point congestion in the whole new system will equal present congestion, because this, it seems to me, should be taken as the point of practical saturation whatever the point of theoretical maximum capacity may be.

Population figures for different routes or passenger density per mile of track, as a basis for estimating traffic capacity of a given line, are in themselves misleading because they ignore (1) the number and frequency of cars running past a given station and (2) the length of the route over which the cars run in making a single trip, both of which register themselves accurately in the number of car miles operated over a given line in a given period of time.

The present subway consists of a trunk line lying south of Ninety-sixth street and two branches running north from that point.

Of the total car miles operated during the year ending June 30, 1910, there were run over the trunk and branches as follows:

Broadway division, trunk, 14,097,906 car miles, branch (north of Ninety-sixth) 7,832,081 car miles.

Lenox avenue division, trunk, 16,756,809 car miles, branch 10,906,893 car miles.

Total, 30,845,715 car miles, branch 18,758,974 car miles.

Applying to this car mileage the figures of ticket sales during the year ending June 30, 1910 (as adjusted by the Public Service Commission in the report of the conferees, June 5, 1911), we find that: In the same year the trunk carried 6.06 passengers per car mile. In the same year the branches carried 4.38 passengers per car mile.

The proposed new Interborough subway system may be divided into trunk and branch lines, as follows:

Broadway line, trunk from Ninety-sixth street, south.

New Lexington avenue line, trunk from One Hundred Thirty-eighth street, south.

New line, Brooklyn, trunk from Eastern parkway and Nostrand avenue, west.

The trunks, therefore, will be all tracks lying south of Ninety-sixth street and Broadway, on the present subway, and south of One Hundred Thirty-eighth street in the Bronx and west of Nostrand avenue and Eastern Parkway in Brooklyn, on the new subway.

The branches will be:

(a) The lines of the present subway north of Ninety-sixth street.

(b) Jerome and River avenue subway in the Bronx (One Hundred Thirty-eighth street to Woodlawn).

(c) The White Plains road line (One Hundred Eightieth street to Becker avenue).

(d) Southern boulevard and Westchester avenue line to Pelham Bay park.

(e) Eastern Parkway and Livonia avenue lines east of Nostrand avenue.

(f) The Nostrand avenue line. .

(g) The Astoria line.

(h) The Woodside line.

Applying the car mile figures (found to have been the result of operation on trunk and branch lines) of the present subway and allowing for the same congestion as found in the present subway, we get a traffic for the new lines as follows:

Trunk line (old and new).....	426,038,519
Bronx branches (new).....	126,452,760
Present branches (old).....	82,032,296
Brooklyn branches (new).....	29,880,566
Queens branches (new).....	37,978,757
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Total.	702,382,898
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In reaching this figure the new branches have been given a car mileage per mile of route, on the following ultra liberal basis:

Jerome and River avenue on basis of present Broadway branch.

Brooklyn branches on basis of present Broadway branch.

Queens branches on basis of present Broadway branch.

White Plains road on basis of present Lenox branch.

Southern boulevard on basis of present Lenox branch.

The total of 702,382,898 passengers is subject to the following adjustments owing to joint operation over certain branches:

Jerome Avenue Branch.— This branch is to be used between One Hundred Sixty-second street and Woodlawn cemetery jointly by elevated and subway. On the assumption that eight car elevated trains are to alternate with ten car subway trains, the elevated will get 41.45 per cent of the total traffic of 30,320,743 which will mean a deduction of 12,567,948 due to elevated operation (elevated cars seating forty-six persons to fifty-two for subway cars).

White Plains Road.— Between Becker and Olin avenues there will be joint subway and elevated operation. The subway will

lose, therefore, 41.50 per cent of the total traffic of 15,710,806 or 6,512,129.

Queens.—In Queens the Interborough Company will furnish service beyond Forty-second street and Park avenue at which point passengers will have to change to crowded north and south trains. The Brooklyn Rapid Transit Company, on the other hand, will give through service across Forty-ninth street and south on Broadway. Furthermore, Second avenue trains will be operated by the Interborough Company across the Queensboro bridge and over the Queens extensions. It is safe to assume under these circumstances that the Interborough subway division will not get more than one-third of the traffic. This will mean a deduction of 25,318,272.

The total deductions are, therefore:

Jerome avenue	12,567,948
White Plains road.....	6,512,129
Queens	25,318,272
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Total	44,398,349
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We have, therefore, a gross total of.....	702,382,989
Less	44,398,349
Corrected total	657,984,549
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These 657,984,549 passengers would suffice to congest the new combined system to a point equal to 1910 congestion. 1912 congestion is, however, 11.62 per cent greater in number of passengers carried. This means that when the new amalgamated system reaches a traffic of 734,442,352, it will be crowded to the present point and will attain practical saturation.

The second factor not fixed by the contract is the operating ratio.

The only accurate and scientific method of measuring operating expenses is that based upon the cost of operation per car mile operated. In view of the fact that general railroad practice and universal experience have resulted in the adoption of this basis of calculating operating cost, the use of it here scarcely requires

justification. The haphazard method of arbitrarily apportioning an assumed percentage of gross receipts to operating expenses is manifestly without accurate basis and is pure guess work.

Having found the cost of operation in the new subway per car mile and knowing the number of car miles it will be necessary to run in the new subway to carry passengers with the same degree of congestion that has been experienced in the present subway, year by year, it becomes a mere matter of computation to determine the operating cost of the new subway and therefore the percentage of gross receipts that such operating cost will constitute.

The present subway in 1906 had a cost per car mile of 9.32 cents. This cost rose in the most expensive year to 10.43 cents, and in the present year is 10.4 cents. As the new subways cannot be expected to operate on a more economical car mile cost than the present subway (witness the recent increase of wages), the car mile cost of operation in the new subways the present year, namely, 10.4 cents, has been taken. Knowing precisely, as we do, the number of passengers carried per mile in the present subway, year by year, and applying these figures to the assumed passenger traffic of the new subway, year by year, we find the number of car miles that it will be necessary to operate in the new subway each year in order to carry passengers with the same congestion experienced in the present subway, year by year.

The passenger figures for the years 1909 and 1910 have not been used because during these years there existed abnormal conditions, among them the opening of the Brooklyn extension. In their place I have used the average of the other years of operation of the present system, namely, 4.5 passengers per car mile. The percentage of operating cost is, therefore, reckoned as follows:

For the Year 1917.

Operating cost per car mile.....	10.4 cents
Depreciation per car mile (as per report of Bion J. Arnold, rendered to the Public Service Commission).	1.5 cents
Total	<u>11.9 cents</u>

Assumed passenger traffic for 1917, 425,000,000.

425,000,000 divided by 4.32, the number of passengers per car mile which the present subway carried in the year ending June 30, 1906, equals 98,379,620 car miles.

Multiplying this number of car miles by the operating cost, 11.9, we have a total operating cost of \$11,707,172 00

Allowance for obsolescence of equipment, three-fourths of one per cent (taken from the report of conference committee of June, 1911) equals 420,000 00

Allowance for insurance of equipment, one-half of one per cent equals 280,000 00

Gross total \$12,407,172 00

This sum equals 58.38 per cent of the gross revenue of the new subways for the year 1917.

Similar calculations have been made for succeeding years, the number of passengers per car mile carried by the present subway in the year 1912 being used for all years following 1922.

Taking, therefore, 425,000,000 passengers, the Interborough's more liberal estimate, as the traffic of the first year of the new combined system, and 735,000,000 passengers as the point of saturation reached in the year 1926, and taking the car mile costs for operating expenses at 10.4 and the passenger density per car mile at that of the present subway, the company's cumulative deficit will not be wiped out until the year 1941, and the city's cumulative deficit will never be wiped out. Further, the net earnings of the system will not be enough to pay current interest on the city's bonds in any year.

The net result will be that at the end of the contract term, the city will have paid approximately \$118,000,000 out of the tax budget for interest and sinking fund upon its bonds issued for construction even if its deficits are not all funded. Whether this represents the limit of the city's loss on account of interest and sinking fund, will depend upon the people's willingness to be

crowded in the new subways as shamefully as they now are in the old. If popular opinion and comfort of farepayers demand the construction of more subways before congestion has been reached equal to the present, the city's loss of interest and sinking fund will be proportionately and enormously increased. The amount of this loss, whatever it may be, must be found somewhere by the city, and can be had from but one source, whether defrayed during the life of the lease or upon its termination. That source is taxation.

II.

BECAUSE THE PLAN PROPOSED COMBINES ALL OF THE WORST FEATURES OF MUNICIPAL OPERATION WITH ALL OF THE WORST FEATURES OF PRIVATE OPERATION, AND FORFEITS FOR THE CITY ALL OF THE BENEFICIAL FEATURES OF MUNICIPAL OPERATION AND MOST OF THE BENEFICIAL FEATURES OF PRIVATE OPERATION.

First. It makes the city underwriter of all losses and guarantor of the enterprise.

Second. It depletes the city's treasury and impairs its borrowing capacity without securing the objects of municipal construction.

Third. By making the company's profits independent of efficiency and economy it tends to make the company disregardful of public comfort and convenience.

Fourth. It gives to the company all of the profits of the enterprise.

Fifth. It deprives the city of control by making recapture impracticable or impossible.

Sixth. By giving to the company a large preferential profit and denying to it the prospect of any further profit, it removes all incentive to efficient management once the preferentials have been safely earned, and supplies the strongest motive for seeking indirect profits and for political chicanery.

If, as has already been demonstrated, there is no prospect that the city will earn interest and sinking fund on its bonds, there cer-

tainly is no prospect that there will ever be a surplus profit for division between the city and the company. The company, therefore, once it has wiped out its accumulated deficit, and is in the safe enjoyment of its annual preferential income, will find no further incentive for economy or improved operation. It will, however, find strong incentive to lay its hands on any surplus earnings over its own preferentials which would otherwise go to defray, in part, the city's fixed charges. In other words, every motive is supplied for the organization of subsidiary companies for the sale of cars, equipment, etc. True, the contract provides that no such subsidiary companies shall be organized. In the first place, however, such a covenant is incapable of practical enforcement, because the city cannot be in a position to prove that any given corporation has been organized for such purposes or that the operator is interested therein. In the second place, it is easy to acquire an existing corporation, without going to the trouble of new organization, and this the contract does not inhibit. In point of fact the Interborough Company already has such a subsidiary in the Rapid Transit Subway Construction Company, which has served in the past and is ready to hand.

Under a contract such as that proposed, there would be nothing to prevent the making of unduly lucrative contracts with favored individuals, should the operator so desire.

Another inherent vice lying in this absence of motives of economy is the invitation that the contract holds out to the operator to turn the administration of the new subways into the worst type of political machine, by filling the payrolls with supernumeraries once the preferentials have been earned. A motive is supplied in the threat of recapture by a subsequent city administration.

III.

BECAUSE FOR THE REASONS ALREADY STATED UNDER POINTS I AND II FOREGOING, TO ENABLE THE CITY TO GET BACK EVEN A PART OF THE INTEREST AND SINKING FUND UPON THE CAPITAL THAT IT IS ABOUT TO INVEST IN THE NEW SUBWAYS, REQUIRES A CONGESTION IN THE NEW SUBWAYS EQUAL TO, OR WORSE THAN, THAT IN THE PRESENT SUBWAY. THIS BOARD OUGHT NOT TO FORCE UPON THE PEOPLE OF NEW YORK THE CHOICE OF IN-

DECENT CONGESTION OR A BURDENSOME TAX RATE, WHILE ADEQUATE MEANS OF RELIEF THROUGH A CITY-BUILT, CITY-CONTROLLED AND, IF NECESSARY, CITY-OPERATED LINE ARE AVAILABLE.

It is quite clear that if the argument made under Point I holds good, the subway will never carry sufficient passengers in any one year to earn interest and sinking fund for that year upon the city's bonds issued for construction, unless through a crowding of passengers worse than that found in the present subway.

As the city in any case can never hope to wipe out its cumulative deficit by the earnings of the new subways under this contract, it must determine in advance of the first year of operation how each deficit shall be met when it arises.

On the basis of the most liberal traffic estimate submitted for the first year of operation, of 450,000,000 passengers, the city's deficit that year would amount to \$2,940,000, and on the basis of the Interborough's estimate of 425,000,000 it would be the same. The city, therefore, must determine in 1917 whether this deficit can be met by writing the amount thereof into the tax budget for the ensuing year or by the issue of bonds to fund it. The funding of a deficit which the city can never expect to discharge, but which, as far as reasonable foresight can predict, will go on increasing during the life of the contract, would constitute reckless municipal financing. Such a course would shortly destroy the city's bonds, as they occur from year to year, will be carried in the tax budget.

As the first such deficit, on the basis of all traffic estimates will amount to \$2,940,000, it is quite clear that the city, in adopting this contract, is compelled to choose between deplorable congestion to relieve which it was supposed new subways were chiefly to be built, and large and burdensome additions to the tax rate.

On the other hand the estimates of traffic and cost prepared by the engineers of the Public Service Commission show that the independent city subway system, whether operated by the Brooklyn Rapid Transit Company or by some other operator will earn not only interest and sinking fund on the city's bonds but

within a few years will show a handsome profit to be shared by the city.

IV.

BECAUSE THE CITY'S POWER TO RECAPTURE, WHICH EVERYONE CONSIDERS INDISPENSABLE, IS MADE PRACTICALLY IMPOSSIBLE BY THE PROPOSED TERMS AND IS SURROUNDED WITH CONDITIONS THAT PRACTICALLY INSURE CONFUSION AND LITIGATION.

(a) While the offer appears to conform to the condition precedent to a contract with the Interborough laid down by the comptroller and myself in the transit committee's majority report of January 5, 1911, and in memorandum as submitted to this board, namely, an exchange of its lease upon its Fourth avenue subway south of Forty-second street for an equivalent lease upon the new Seventh avenue subway, in point of fact it leaves a loophole through which the company may escape compliance with this essential part of its contract.

The company's offer, section 6, reads in part as follows: so that the "city if it so elect may obtain possession of either a complete east side or a complete west side subway line, the Interborough Company will consent, in the event of the necessary legislation having been secured, in the securing of which it will co-operate, and provided the lien of any duly authorized mortgage be not disturbed to a modification of Contracts Nos. 1 and 2 * * * so that that portion of the existing subway system extending southward from Forty-second street in Manhattan to Atlantic avenue in Brooklyn * * * shall be held under lease terminable at any time after ten years * * *."

The condition named by the company "provided the lien of any duly authorized mortgage be not disturbed" affords an opportunity for avoiding compliance with this part of the offer. As already twice pointed out in this board, there are two mortgages affecting the present leases of the existing subway.

The first is a mortgage made by the Interborough Rapid Transit Company and is a direct lien upon these leases. This is an ordinary railroad mortgage and contains a release clause such as to enable the Interborough Rapid Transit Company to effect the exchange desired.

The stock of the Interborough Rapid Transit Company is held and owned by the Interborough-Metropolitan Company. The other mortgage is one made by the Interborough-Metropolitan Company, pledging this Interborough Rapid Transit Company stock as security for the Interborough-Metropolitan Company's bonds. One clause of this mortgage reads as follows:

"And the Interborough (Rapid Transit) Company shall do all these things necessary or proper to preserve its rights in said rapid transit railways under and pursuant to said leases."

Quite obviously, then, the Interborough Rapid Transit Company if called upon to comply with the terms of its offer, it may answer that the lien of the above-described duly authorized mortgage would be disturbed by compliance and that, therefore, under the terms of its offer, it need not comply. In order that the city may be in a position to compel an exchange of these leases, the Interborough-Metropolitan Company, the mortgage trustee and the bondholders should join in the agreement for exchange.

As it stands, this clause of the offer is calculated to mislead the city's authorities into the belief that they are about to obtain control over a continuous east side trunk line which, in point of fact, they will never get.

(b) The recapture provision becomes inoperative when read in the light of subdivision 7, section (a) of the offer, which reads in part as follows: "The right of recapture provided for in this paragraph shall nevertheless be exercised by the city with respect to the whole of any one or more of the following groups of lines (a) the Seventh avenue line including the extension under the East river to Borough hall, Brooklyn, the Lexington avenue line together with the extension to Pelham Bay Park and on Jerome avenue to the extension of the latter avenue with Woodlawn road adjoining Woodlawn Cemetery."

The provision just quoted makes it incumbent upon the city to take both the Seventh avenue and Lexington avenue or neither. It thus nullifies that part of the offer relating to the exchange of the present Fourth avenue for the Seventh avenue or Broadway for Lexington avenue divisions. If the exchange were effected then this provision for the taking of both or neither the

Seventh and Lexington avenue divisions becomes both impracticable and impossible.

(c) In failing to provide for a segregation of city capital to trunk lines or for the taking by the city of trunk lines up to the aggregate of its total investment without additional payment to the company, the proposed contract places serious difficulties in the way of recapture by the city of any material portions of the new subways.

If the city capital were segregated to trunk lines then in exercising its right to recapture such trunk lines, the city would not be compelled to make a large capital payment to the company. The same is true, if the city were permitted to take over a specified group, or groups, of lines up to a total value equal to its capital investment, either without paying any additional capital sum to the company or if the value of the lines recaptured was found to exceed the total of the city's investment, then on payment of such excess only. Under the present terms of the offer, to take over any group or groups of lines, the city will be compelled to pay to the company a capital sum equal to the company's investment in such lines, as the offer now stands, will be upwards of 50 per cent of the cost of construction. The improbability of the city's ever being in a position financially to pay over so large a lump sum has been pointed out sufficiently heretofore.

(d) The provision for the recapture of the present subway at the end of thirty-five years "upon payment to the company of a sum equal to the then present worth of the existing subway leases estimated upon the basis of the annual net profits of the five-year period immediately preceding recapture is absurd and impossible of performance.

As receipts of old and new divisions are to be pooled from 1917 forward, it will manifestly be impossible to determine the net profits of the old portion for any five-year period subsequent to 1917, and therefore impossible to compute the then present worth of the lease of that portion of the system. This provision sounds well, but is wholly valueless to the city, not only for the reason stated, but also because, even were it possible to compute

the then present worth of the lease, recapture would entail a lump sum payment far beyond the city's means.

V.

BECAUSE, BY INSURING THAT THE CITY WILL NEVER RECEIVE INTEREST AND SINKING FUND UPON ITS BONDS ISSUED FOR CONSTRUCTION, FOR ALL OF THE REASONS STATED UNDER POINT I, IT PREVENTS THE EXEMPTION OF THESE BONDS FROM THE DEBT LIMIT AND THEREBY IMPAIRS THE CITY'S SUBWAY BUILDING CAPACITY FOR THE FUTURE.

VI.

BECAUSE IN PROVIDING THAT FUTURE EXTENSIONS AS SOON AS THEY BECOME PROFITABLE SHALL BE INCLUDED UNDER THE OPERATING TERMS OF THE GENERAL UNPROFITABLE CONTRACT, IT MAKES CERTAIN THAT THE CITY WILL NEVER RECEIVE INTEREST AND SINKING FUND UPON BONDS ISSUED FOR FUTURE EXTENSIONS.

This work will have two harmful results: first, it will prevent such bonds from exemption from the debt limit; second, it will greatly discourage the building of future extensions because of the necessity for the inclusion of the bonds issued for their construction in the general city debt.

ON GROUNDS OF PLAIN BUSINESS.

VII.

BECAUSE AN INDEFENSIBLE FAILURE TO PROVIDE FOR DEPRECIATION AND OBSOLESCENCE IN THE PRESENT SUBWAYS IN THE PAST IS MADE THE BASIS OF A GIFT FOR PRIVATE CAPITAL OF OVER \$1,000,000 A YEAR FOR FORTY-NINE YEARS.

On account of the company's alleged capital now invested in the present subway, the preference to be paid to the company is \$6,335,000, which is said to be the average of the net profits of the last two years of operation. In point of fact it is no such thing, but, approximately, \$1,000,000 higher than the actual average of net profits of the last two years. During these two years of operation when the net profits of the Interborough Company from the subway were claimed to be respectively

\$6,769,577 and \$5,900,423, the company, as already stated, was not providing for depreciation or obsolescence during those two years would have been \$2,128,002. This figure is based upon the following:

Depreciation during year ending June 30, 1910,	
at 1.5 cents per car mile.....	\$746,339 00
Obsolescence at three-fourths of 1 per cent on	
\$35,000,000	262,500 00
	<hr/>
Total	\$1,008,839 00
	<hr/>

Depreciation during year ending June 30, 1911,	
at 1.5 cents per car mile.....	\$856,663 00
Obsolescence at three-fourths of 1 per cent on	
\$35,000,000	262,500 00
	<hr/>
Total	\$1,119,163 00
	<hr/>

The rate of depreciation per car mile is taken from the report rendered by Bion J. Arnold upon the "return investment in the subway" to the Public Service Commission, and is his estimate of the amount that ought to be set aside annually for that purpose. The rate for obsolescence is that suggested in the conference committee's report of last June and is three-fourths of 1 per cent of the cost of equipment. It follows therefore that the preferential sum to be paid the company, including as it does one million dollars of deferred depreciation and obsolescence is that more than a million dollars higher than the average net earnings of the last two years. The city will therefore pay to the company every year during the life of the proposed contract, as part of this preferential, one million dollars more than the average net earnings of the Interborough subway during the past two years.

VIII.

BECAUSE FROM \$40,000,000 TO \$50,000,000 IS NEEDLESSLY GIVEN TO PRIVATE CAPITAL BY SACRIFICING TERMS IN EXISTING CONTRACTS AS TO READJUSTMENTS.

This result has been fully explained already in memoranda which I have filed with this board heretofore and is clearly and fully restated in the memoranda of the City Club and of the People's Institute. It will be sufficient to refer here to the fact that the initial terms of contracts 1 and 2 expire respectively in the years 1954 and 1943; that under the existing contracts there will be on those dates readjustments of terms and that, if agreement cannot be reached between the city and the company, arbitration may be had.

A forty-nine year flat term without readjustment would extend the period of the company's enjoyment of its present lucrative terms of operation for twelve years, in the case of the longer lease, and for twenty-three years in the case of the shorter lease.

The estimate of forty to fifty million dollars which the company will gain and the city lose by extending the terms of both leases to forty-nine years without readjustment is based upon the reasonable assumption that neither through agreement nor arbitration would the company get better terms than an even division of profits with the city over and over expenses of operation.

Assuming that the present subway would be carrying no more than 300,000,000 passengers at the time of the expiration of the initial term of leases 1 and 2 and operating at the same cost ratio as now, the net profits per year would be \$4,368,100 for contract No. 1 and \$1,681,900 for contract No. 2.

Assuming that agreement or arbitration would then result in an even division between city and company, the city by waiving the readjustment at the end of initial terms gives up \$2,184,050 per year for twelve years in the case of contract No. 1 and \$840,950 for twenty-three years in the case of contract No. 2, or \$45,549,450 in all.

IX.

BECAUSE THE COMPANY IS TO BE GIVEN BACK THE VALUE OF THE EQUIPMENT OF THE PRESENT SUBWAY THREE TIMES OVER AND THE VALUE OF NEW EQUIPMENT TWICE OVER.

As to old equipment:

Once, as a part of operating expenses under the name of depreciation, and obsolescence funds, as per section 12, subdivision

(a) of the offer. The amounts which the company may annually write into the depreciation and obsolescence funds are not limited. The conference committee's report of last June calls for an annual sum sufficient fully to amortize equipment by the end of the contract. These funds will, therefore, undoubtedly equal the cost of equipment at the end of the forty-nine-year period.

A second time: through the preferential payment of \$6,335,000, which, as has already been pointed out, includes sums for depreciation and obsolescence which should have been, but were not, deducted in the past.

A third time: through the operation of section 17 of the offer, which compels the city to take over the existing equipment on the expiration of the contract term at its then appraised value. As the funds above named, established under section 12, subdivision (a), of the offer undoubtedly will be sufficient to amortize the value of the equipment on the expiration of the contract term, any sum which the city pays the company for the then value of the equipment will be *pro tanto* a third payment.

As to new equipment:

Once, as a part of operating expenses under subdivision (a) of section 12 of the offer.

A second time, through the sinking fund presumably to be provided for as a part of the 6 per cent preference upon new capital payable to the company under subdivision (c) of section 12 of the offer, I say presumably, because the offer contemplates that the company shall get a flat 6 per cent on its new capital investment, without the segregation of this sum into interest on the bonds and sinking fund.

X.

BECAUSE THE SINKING FUNDS ESTABLISHED ARE GROSSLY EXCESSIVE, WITHOUT ANY PROVISION THAT THE CITY SHALL SHARE IN THE SURPLUS CREATED.

With all of the guaranties included in this proposition, the company's bonds cannot conceivably fail to sell at par or better, if offered as 5 per cent bonds, and if sold by public letting or auction, as they should be, as ordered by the Public Service Commission in the cases of

the Bronx Gas & Electric Company, and Kings County Lighting Company, in New York; and as in the case of the Consumers' Gas Company of Toronto, and all gas and water companies in Great Britain. This will leave a sinking fund of 1 per cent to amortize the cost of construction. In point of fact, at the end of the contract term, the sinking fund which is the result of accumulations of annual payments of 1 per cent upon the new capital, if invested at $4\frac{1}{2}$ per cent, will equal the amount of the company's capital investment plus a surplus of \$60,000,000. In other words, an annual payment of 1 per cent on \$77,000,000, if invested at $4\frac{1}{2}$ per cent throughout a term of forty-nine years and one per cent on \$10,000,000 for forty-four years will amount at the end of the lease term to \$126,404,086. This exceeds the company's total investment of \$87,000,000 by \$39,404,086.

The offer does not provide that such surplus of \$60,000,000 or \$39,404,086, as the case may be, shall revert to the city. As the offer now stands, the company may, and will, appropriate this enormous bonus. Any fair contract should provide either that all surplus in such funds shall revert to the city until all the accumulated deficits are wiped out, and that the remainder of any surplus in such funds shall be shared by the city and company equally, or that the interest and sinking fund, which latter should not exceed .588722 per cent, an annual increment sufficient, if invested at $4\frac{1}{2}$ per cent, compounded annually, to wipe out the principal in forty-nine years.

This objection applies alike to the offer of the Interborough Company and to the proposed contract with the Brooklyn Rapid Transit Company.

XI.

BECAUSE THE OFFER DENIES THE CITY A SHARE OF ANY ADVANTAGE THAT MAY BE REAPED BY THE COMPANY THROUGH THE SALE OF ITS BONDS AT A PREMIUM.

This also applies to both companies.

In view of the city's extraordinary guaranties against all and any conceivable loss, the company's bonds would undoubtedly sell considerably above par if sold at public auction or letting, as they should be. As the price realized will be wholly the result

of the city guaranties, some share of the premium should be reserved to the city or at least credited toward amortization of principal.

I offer in evidence an article by Delos F. Wilcox, formerly head of the franchise bureau of the Public Service Commission. This article was printed in the Municipal Magazine; it is entitled "The New York Subway Contracts." Mr. Wilcox is considered to be an authority.

THE NEW YORK SUBWAY CONTRACTS.

The Chicago street railway settlement ordinances, coming just before the day of regulation by commission, marked an era in franchise contract regulation, and in spite of the vigor of the commission movement the stimulus given to elaborate regulation by contract has not yet been checked. In 1910 the Cleveland street railway settlement and the Minneapolis gas ordinances embodies the spirit of local regulation in complex agreements which have since vied with the Chicago ordinances in public interest. Many other cities are wrestling with big franchise problems, and seeking to realize settlements patterned more or less after the "Chicago plan" or the "Cleveland plan."

There seems to be a tendency toward more and more elaborate franchise contracts wherever private ownership or operation is regarded as temporary, and preparatory for municipal ownership or operation. Why this should be so is clear when we consider the financial interest which the city has as the prospective owner of a great public utility. Immense property rights are involved. Sometimes the investment in a single utility is greater than the entire outstanding debt of a city. When the city is granting a franchise for the construction, reconstruction or development of such an enterprise, and looks upon it as something which the city itself will sooner or later acquire, it is only common business prudence — one of the established ways of the world — to insist that the grant of privileges shall be carefully defined and restricted, and tied up with corresponding obligations for the benefit of the city.

These are stirring days in public utility regulation. Six years ago the first public service commissions were established in two

States, New York and Wisconsin. The public utilities commission idea has spread so rapidly that now there are commissions with wide powers in about one-half of the States, and more are coming.

It has been thought by some that the advent of commissions embodying the idea of continuous regulation of rates and services under the police power, sounded the death knell of the franchise contract. In certain localities, State regulation has been striding across the horizon brushing aside local ordinances and even home rule charters and accepted franchises as if they were cobwebs in the corner of the sky. People have asked: "Why do we need any elaborate franchise documents, when we have the power to regulate the utilities at any time? Why not forego the attempt to foresee the future and to write down in a contract things which only time can prove? Why not leave all such matters to the public utilities commission, to be decided as the specific need arises?"

If public utilities are viewed as a permanent function of private corporations, so that no one has any interest in the property as such except the present owners and the users of the utility, it may be said with some show of reason that a franchise need be nothing more than a permit to occupy the public streets. If, on the other hand, ultimate municipal ownership is kept in view, either as an established policy or as a lively option, it is evident that commission regulation cannot take the place of a contract between the parties, covering at least the elements going to the determination of the purchase price, the upkeep and extension of the property, the audit of investment accounts, the amortization of the capital value out of earnings, and other kindred matters.

Commission regulation has been looked upon, either as a permanent substitute for public ownership or as a final experiment and preparation for it. Which it is, makes all the difference in the world. If it is the former, elaborate franchise contracts will not be considered necessary and the municipalization of public utilities will become more remote and more difficult from year to year. If it is the latter, regulation will not interfere with franchise contracts, except where they are devised to weaken

ultimate public control and will look with favor upon specific arrangements between cities and utility companies tending to prepare the way for municipal ownership.

As if to prove beyond peradventure that continuous regulation cannot take the place of the contract method, it was left for the Public Service Commission having jurisdiction in New York City, though a State body created for regulatory purposes, to carry the idea of contract regulation furthest of all. The subway contracts and elevated railroad certificates signed by the Commission on March 19, 1913, are volumes with an aggregate of no less than 700 printed pages. With its right hand, as representative of the city, the commission marshals 125,000 cunning words and after many an interminable conference, organizes them into contract form and requires the companies to sign them. At the same time, with its left hand, as an organ of the State, the commission holds taut the reins of regulation by administrative order, and jealously asserts its prerogative to regulate, independent of franchise contracts. The secret of the voluminous contracts in New York, as in Chicago, Minneapolis and Cleveland, is the fact that in each case the idea of future municipal ownership dominated the negotiations.

The New York City rapid transit settlement just consummated after eight years of subway negotiations and more than twenty years of intermittent dickering with the elevated roads, constitutes the most stupendous local franchise bargain that has ever been considered by any city in the world. With a population of five million people within its municipal boundaries, New York now has three systems of local rapid transit railways, representing an aggregate capital investment of about \$250,000,000 and an annual capacity of about 800,000,000 passengers. The city also has four great bridges over the East river connecting the borough of Manhattan with the boroughs of Brooklyn and Queens, constructed at a cost of about \$100,000,000. These bridges were constructed at a cost of about \$100,000,000 to carry altogether twelve rapid transit railroad tracks, of which only the two tracks on the New York and Brooklyn bridge have thus far been used to their capacity, while of the rest only the two on the Williamsburg bridge have thus far been used at all.

The rapid transit plans just agreed upon involve the expenditure of about \$330,000,000 of new capital in transit lines, and the putting of the bridges across the East river into full use. Thus it appears that these plans call for an immediate increase of about 130 per cent in the investment in rapid transit railroads proper, and an increase of more than 200 per cent in the utilization for rapid transit purposes of the \$100,000,000 investment in the bridges. The so-called "dual plan," as embodied in the new contracts and franchises, provides for an increase of 150 per cent in the total passenger capacity of the rapid transit lines, so that, at the end of five years, with all the proposed new lines constructed, connections made and additional facilities provided, New York City's rapid transit capacity will be at least 2,000,000,000 passengers per annum. How stupendous the plan is and how important the influence it must necessarily have upon the financial, social and industrial conditions in New York may be seen from the fact that in the fiscal year ending June 30, 1912, the total number of fare passengers carried in New York City on all the local transit lines, including the surface street cars, was less than \$1,700,000,000. In other words, it is now proposed to enlarge the rapid transit system at one stroke so that it will accommodate within four or five years more than the total number of passengers now conveyed on the rapid transit lines plus the surface street railways.

The engineering problems connected with this vast enterprise have for the most part been overcome in the construction of the old subway and the bridges. It is possible that still greater difficulties may be met in burrowing under the narrow roadways of Nassau and William streets, among the roots of the sky-scrapers of the financial district, but the engineers approach the problem with confidence, believing that in the main the difficulties still to be encountered are similar to those which have already been overcome.

It is the political and financial aspects of the problem that have caused most of the trouble. When we reflect upon the variety of the financial interests involved, upon the complexity of the legal requirements and the multiplicity of authorities whose co-operation is required, it is a marvel that any subways at all have

been constructed and put in operation in New York. It is inevitable that plans involving so much and the interests of so great a population in matters so vital to every-day comfort, convenience and business success, should have been the subject of fierce controversy. Ever since the present subway was opened in 1904, the public authorities of New York have been planning, negotiating, replanning and wrestling with the problem of subway expansion, and ever since 1881 the problem of additional franchises for the improvement and extension of the elevated railroads has been acute. Nothing had been accomplished with the Manhattan Railway since J. P. Morgan headed a committee to negotiate new franchises with the rapid transit board and old Jay Gould tottered down to tell the board that the elevated railroads were one of the chief health agencies of the city, warranted to cure any disease but grip, all by reason of the atmospheric circulation induced by the rush of trains through the upper regions of the streets. Now that a comprehensive plan of subway and elevated railroad expansion has at last been agreed upon, and the contracts signed, sealed and delivered, even the reluctant consent of the thrifty and reactionary heir of "Doctor" Gould having been secured, the country should find it worth while to pause long enough to cast an inquiring glance in the direction of New York City's achievement and look to see how far the metropolis is ahead of or behind its sister cities in the franchise procession.

Briefly, the dual plan, as the city's newly adopted rapid transit policy is called, involves the following main points:

1. The elevated railroads in old New York (Manhattan and the Bronx) are to be extended and third-tracked by the Interborough Rapid Transit Company, the lessee of the Manhattan Railway Company, under eighty-five-year franchises. The existing franchises are perpetual. The new ones for the third-tracking and extensions are to be indeterminate after ten years within the eighty-five-year limit, and provision is to be made for the amortization, within that time, of the new capital invested. The Manhattan Elevated Railway, as extended and improved, is to be operated as a separate five-cent fare system, serving Manhattan and the Bronx, with the addition of trackage rights over

certain rapid transit lines to be constructed by the city, serving a portion of the boroughs of Queens tributary to the Queensboro bridge, which enters Manhattan at Fifty-ninth street on a line with the southern boundary of Central Park.

2. The present municipal subway, extending north and south through the borough of Manhattan with two branches running into the Bronx, north of the Harlem river, and one short extension to the business heart of Brooklyn, now operated by the Interborough Rapid Transit Company under leases from the city, is to be extended by what is practically a doubling of its lines in Manhattan and the Bronx, by the addition of another tunnel under the East river to Brooklyn by the construction of lines to serve an important V-shaped section of Brooklyn not now served by any rapid transit line and by the utilization of the Steinway tunnel under Forty-second street and the East river with two extensions into the northwest portion of the borough of Queens.

The present subway was constructed with city money and equipped by the operating company. The extensions of the present subway are to be constructed half with city money and half with money furnished by the operating company, and are to be equipped by the company. The present subway is held under two leases. One, covering the portion north of the City Hall, originally extended for a period of fifty years from 1904, with the right of renewal for twenty-five years more upon a readjustment of the rental. The other, covering the line from City Hall to Atlantic avenue, Brooklyn, extended for a period of thirty-five years from 1908, with a similar right of renewal. During the renewal terms, the rentals were to be readjusted, and at the final expiration of the leases in 1979 and 1968, the city was to get possession of the subway free of cost and to purchase the equipment at its then fair value. In all probability, the rental during the renewal periods would have been more than sufficient to pay for this equipment.

Under the new subway contract with the Interborough Rapid Transit Company, the existing leases have been levelled by the extension of their original terms to December 31, 1965, and by the abrogation of the company's right to the renewals. The new lines connected with the present subway are to be leased to the

Interborough Company, and not only the new subways themselves, but the new equipment will come into the possession of the city without cost at the expiration of the new contract, some fifty-three years hence. In the meantime, however, although the city's investment of about \$60,000,000 in the present subway will continue to be taken care of as a first charge on the earnings of the extended system, the company will be entitled to take out of earnings the sum of \$6,335,000 annually, representing its average annual net profits for the two-year period ending June 30, 1911, and 6 per cent on all new capital furnished by it, before either interest, sinking fund or profit is paid upon the city's share of the new investment. When coupled with the 6 per cent upon new money immediately to be furnished by the company, this preferential payment is figured out as 8.76 per cent upon the entire amount of capital to be invested in the enlarged system prior to the beginning of operation in 1917. Following this preferential the city is also to receive 8.76 per cent upon the new money furnished by it. After the enlarged system has gone into operation, however, the company will be required to contribute one-half of the cost of additions and betterments needed from time to time, and the entire cost of the additional equipment that may be made necessary by the growth of traffic. Upon this additional money the company will receive 6 per cent annually as a preferential wedged in between its original preferential and the city's 8.76 per cent. If anything is left after the payment of these huge preferentials and the establishment of a contingent reserve, the balance will be treated as net profits and will be divided equally between the city and the company.

The present subway, with the extensions included in the new lease to the Interborough Rapid Transit Company, is to be operated for a single five-cent fare, but without transfers (except at one point) to the elevated railroads of the Manhattan Railway system, which is to be operated by the same company, and also without transfers to the other subways and elevated railroads, not operated by this company.

3. The existing elevated railroad system of Brooklyn is to be in large measure reconstructed, third-tracked and extended. As extended it will have three lines running into Queens, serving

certain limited portions of that borough not reached by the proposed extensions of the Steinway tunnel. The elevated railroads of Brooklyn now dump their passengers at the Manhattan terminals of the New York and Brooklyn bridge and the Williamsburg bridge, but have no facilities for distributing them through the main business district of the city. It is proposed, therefore, to construct a new system of subways to provide adequate terminal facilities in lower Manhattan for the elevated railroads of Brooklyn and to serve portions of the borough of Brooklyn not now adequately provided with rapid transit lines and not included in the V-shaped section which is to be developed as a part of the Interborough Rapid Transit Company's area. Of the cost of these new subways the city will furnish about six-sevenths and the company about one-seventh, while the company will furnish the entire cost of equipment. This company is also to have trackage rights over the rapid transit lines to be constructed by the city as extensions of the Steinway tunnel in the northwestern part of the borough of Queens. It is to be noted that while the Interborough Company will operate two separate and independent systems without exchange of transfers (except as noted), the New York Consolidated Railroad Company (operating subsidiary of the Brooklyn Rapid Transit Company) will operate the elevated railroads of Brooklyn and the subways allotted to it as a single five-cent fare system. But the free transfers now being given at many points between the elevated railroads of Brooklyn and the surface street car lines will be discontinued, unless future arrangements are made with the city's approval, for their continuance. The general terms of the contracts under which the elevated roads of Brooklyn are to be improved and extended and a system of municipal subways is to be operated in connection with them, are similar in most respects to the terms upon which the city deals with the Interborough Rapid Transit Company. But the company's fixed preferential and the city's percentage preferential are both much smaller under the Brooklyn contract than they are under the Interborough contract, thus leaving a better hope for divisible profits. The plans for the extension and third-tracking of the elevated roads are to be carried out by the company under eighty-five year franchises termin-

able after ten years, and the subways are to be leased for a period ending December 31, 1965, when the city will come into possession of the subway property, including both construction and equipment, without purchase. The existing railroads, however, will be retained by the company under the perpetual franchises which it now holds.

The dual plan, therefore, is "dual" only with respect to the number of operating companies. With respect to operating systems it is a triple scheme. The Manhattan Railway now has a capacity of about 300,000,000 passengers. As enlarged, its capacity will be about 450,000,000. The present subway has a capacity of about 300,000,000. As enlarged it will have a capacity to carry between 750,000,000 and 800,000,000. The elevated system of Brooklyn, as now constructed, with its inadequate terminal facilities, has a capacity of scarcely 200,000,000; while the new combined system of elevated railroads and subways to be operated by the Brooklyn company will probably have a capacity of from 800,000,000 to 900,000,000 per annum. The three systems will represent roughly an investment of \$120,000,000, \$250,000,000 and \$210,000,000, respectively, excluding the cost of the East river bridges, three of which will be used exclusively by the Brooklyn company, and one jointly by the two companies. In the subway contracts, provision is made for the extension of either subway system from time to time in the future, the city to construct the extensions and the respective companies to equip and operate them, subject to certain terms and conditions which are calculated to protect the financial interests of the companies while at the same time leaving the city free to extend its rapid transit lines at any time if it has the necessary funds. One of the chief difficulties under the old subway leases has been that the city has had no power to compel the company to build or equip a foot of extensions, or even to operate an extension if built and equipped by the city.

The New York subway contracts and elevated railroad franchises are so long and so complex that many interesting details must be omitted from this analysis. It will be worth while, however, to attempt a general appraisal of these contracts and

franchises in comparison with the Chicago and Cleveland settlements and in the light of fundamental principles of franchise regulation.

The big features of the Chicago settlement were the following:

1. Surrender of all outstanding franchises and inclusion of substantially the entire surface street railway system, with future extensions, under the terms of a single contract plan.

2. Definite fixing of purchase price, with increase for additional investment, and contract right of city to take over the street railways at any time upon payment of the price thus fixed.

3. First class construction and equipment under control of impartial board of supervising engineers.

4. One-city-one-fare, the same at all hours, five cents for adults, three cents for children from seven to twelve years old, with universal transfers except in the downtown business district.

5. A fixed return of 5 per cent upon capital value, plus a share in net profits to the operating companies to supply the motive for economy and efficiency.

6. Fifty-five per cent of surplus net profits to go to the city and be accumulated as a street railway purchase fund.

7. The right of the city to require a fixed mileage of extensions each year, and such additional extensions as will not reduce the companies' surplus profits to an unreasonably small amount.

8. Right of city to regulate service subject to the approval of the board of supervising engineers.

Certain points in the Chicago settlement have developed which are weak. They are mainly these:

1. Inclusion of franchise values and superseded property to the extent of many millions of dollars without any provision for the amortization of this dead capital.

2. No provision for the investment of the city's profits in the securities of the companies, thus leaving the purchase fund to

accumulate in the banks at the rate of $2\frac{1}{2}$ per cent interest on par with a 5 per cent allowance for brokerage and a 10 per cent allowance for contractor's profit on construction included in par.

3. No provision for purchase by the city except upon payment of the full purchase price of one or both of the systems in cash in a lump sum, thus making purchase difficult and requiring the unnecessary disturbance of the bonded debt.

4. Inadequate provision for continuous control of service by the board of supervising engineers, the initiation of service regulations being left to the city council.

5. No certain provision as to what will happen to the property at the expiration of the franchise in 1927, if the city does not choose to buy it before or at that time.

Though based upon the expectation of municipal ownership, the Chicago settlement has, through its weaknesses, made municipalization more remote and difficult. After six years the city has accumulated a purchase fund of about \$11,000,000 and the purchase price has increased about \$80,000,000. Dead capital alone has probably increased more than the entire accumulations of the purchase fund, though with the completion of the rehabilitation period the increase of the dead capital show now cease.

The Cleveland settlement came three years later than the Chicago settlement, and while the two plans have many points in common, they are radically different in certain respects. In Cleveland, as in Chicago, all outstanding franchises were surrendered and the entire street railway system brought under the provisions of a single ordinance. Also, Cleveland fixed the purchase price at which the city can take over the property at any time. But instead of a fixed fare, division of profits and a purchase fund, Cleveland provided for service at cost by means of a sliding schedule of fares and a fixed rate of return on a fixed investment. Extensions are under control of the city, subject to the company's ability to finance them within the limits of the fare-schedule, the maximum rate allowed being four cents cash fare, seven tickets for twenty-five cents, and one cent for a trans-

fer. But if the twenty-five-year franchise granted is ever allowed to come within fifteen years of expiration, then the city's right to propose extensions will cease and the company will have the right to charge the maximum rate allowed by the schedule and use its surplus profits for amortization purposes. If subsequently the city purchases, it will get the benefit of the amortization. The city retains a check upon new capital expenditures and repairs and renewals, and has full control of service to the extent of the company's ability to earn its fixed return under the maximum fares allowed. Matters of dispute, if arbitrable under the law, are to be determined by arbitration.

The weak points of the Cleveland franchise are these:

1. It capitalizes several million dollars of franchise values and makes no provision for their amortization or the amortization of any part of the capital value except when the franchise comes within fifteen years of its expiration.

2. By absolutely fixing the company's profit, it kills the motive for economy and efficiency supposed to be the main excuse for the continuance of the private operation of public utilities. It is thus compelled to rely upon arbitrary checks and continuous control by the city street railroad commissioner to make the dead motive act as if it were alive.

In practical operation what may be considered an over-emphasis of the low-fare idea in Cleveland has a tendency to limit extensions and to keep the standard of service down, while at the same time, leaving no surplus with which to amortize the investment out of earnings for the city's benefit. But the Cleveland plan at least has the merit of not being heartily approved by the corporations in every municipality where they are trying to get the city to pull their chestnuts out of the fire by the capitalization of ancient losses and the guaranty of future profits on a swollen investment. The Cleveland plan has faults, but from the standpoint of future municipalization, these faults are far less serious than those of the Chicago plan, even though Cleveland is not accumulating a purchase fund.

Three years are an era in these swiftly-moving days. In 1907, Chicago settled. In 1910, Cleveland settled. In 1913, New

York settled. But New York's settlement has to do with subways and elevated roads, not with surface street car lines. Yet it may be truly said that rapid transit in New York has come to be the major factor in local transportation.

In the new subway contracts and elevated railroad franchises New York has gone forward and backward. It has not only made provision for an indeterminate franchise within a maximum time limit, but has made provision for the amortization of the entire original investment within that maximum period. It has reserved the right to terminate the contracts and recapture the subway lines in seven separate divisions. It has reserved to itself unlimited authority to compel the companies to operate extensions, the city assuming the deficits. The city has definitely assumed the risk of the rapid transit enterprises and has reduced the entire new investment in subway and elevated lines to a bond basis, with the bonus for motive offered in the form of a division of net profits with the operating companies. Capital, as such will receive a definite and fixed return. Additional profits, if there be any, will not go to capital at all, but to the operating agencies alone. The city itself constructs the subways and retains the supervision of their equipment and of the reconstruction, extension and equipment of the elevated roads. The city has the right to object to particular items of operating expenses and maintenance, and to invoke arbitration to determine their reasonableness and propriety. In these respects — (1) amortization of the entire investment within a fixed period, (2) recapture of the subways in detail, (3) authority to require the operation of extensions, (4) assumption by the city of the risk of the investment, (5) actual construction and close supervision of equipment by the city, and (6) the city's right to challenge operating expenditures — New York may properly be said to have gone forward.

There is, however, a different side to the story. Let the reader judge for himself whether New York has not made considerable net progress backwards. The new contracts and franchises do not re-settle the outstanding rights of the companies, but leave perpetual franchises undisturbed except to strengthen them and leave long-term leases of city lines untouched except to "level" them by

lopping off fag ends of little value and extending original terms of great value to the company, and by providing in a doubtful manner for an exchange of certain old and new lines in the event of recapture of the new lines by the city. The city goes into partnership with the companies, furnishes vast amounts of capital toward the construction of the new lines, sets this contribution to work to help earn the present profits of the companies and their additional interest and sinking fund charges on account of new investment, and accepts for itself what is equivalent to the second mortgage with no right to foreclose for non-payment of interest. Moreover, the city buys these second mortgage income bonds at par, while it allows the companies to take the gilt-edged first mortgage bonds at 97 with a provision for their retirement in the case of one company at 107½ and in the case of the other at 110. New York does not adhere to the one-city-one-fare principle, even as to rapid transit lines, but perpetuates three operating systems, or, if we count the Hudson tunnels, four, without requiring an exchange of transfers. The city drains its credit almost to the last dollar for rapid transit purposes alone, leaving nothing with which to meet the capital expenditures for other civic improvements bound to follow in the wake of subway expansion, and at the same time permits the companies for fifty years to take out of rapid transit earnings as a preferential the amount of their present profits, swollen by congestion and neglects. New York even provides for the expenditure of many millions of dollars in the reconstruction and improvement of the companies' old lines, these millions to be amortized as a preferential, though the reconstructed property, maintained at the top-notch, will remain the property of the companies for all time, even though it has been paid for. While the city retains authority to compel the companies to operate any number of extensions, it has to build the extensions itself, and unless they are profitable on their own account, it will have to make good the deficits out of its own pocket. The city has the right to recapture the new lines, but all of them are to be hooked up in operation with old lines that cannot be recaptured. So, the termination of a contract in whole or in part will involve the dismemberment of an operating system, the upsetting of

established habits of travel and the substitution of two fares for one. The New York contracts ignore the relation of surface lines to rapid transit lines and make no provision for transfers between them, except at a single point of little importance. Existing transfers to surface lines are to be cut off. With one of the companies, the hope of divisible profits is so remote that the incentive for economy and efficiency bids fair to be entirely absent, leaving the company with its guaranteed profits and interest, and its hand in the city's pocket to spend freely the margin that ought to go to the payment of interest and sinking fund charges on the city's investment. By the spirit of its partnership with the companies, the city pledges itself not to attack but rather to acknowledge and protect as far as possible or necessary the perpetual franchises that might otherwise be forfeited by vigilant public officials. The new elevated railroad franchises run for a maximum period of eighty-five years although their cost is to be fully amortized in less than fifty years out of preferentials allowed for the purpose.

New York had the benefit of its own experience and the experience of Chicago, Cleveland and other cities to guide it. In this enterprise it did not start at the bottom of the well. If we were to apply to it the problem of the frog, the conundrum would have to be put something like this: "A frog finds himself halfway up the side of a forty-foot well. He starts to climb out. Every day he climbs two feet and every night he slips back four. How many days and nights will pass before he gets out?" To one looking at the fundamentally progressive principles theoretically embodied in the subway settlement and then considering the limitations put upon them in the actual working out of the bargain with the rapid transit companies, it seems likely that captious critics in the outside world may regard New York as headed right but going backward.

The controversy over the contracts caused a sharp division among good men who might have been expected to stick together upon fundamental questions of civic policy. But the preponderating influences that put the contracts through, though stoutly proclaiming that the bargain meant municipal ownership, were cold toward the possibility of municipal operation. Official opin-

ion of public utilities, and the city was so faint-hearted on this subject that its enjoyment of full power to operate the subways, without further legislation of any kind, scarcely furnished its negotiators with a talking point. Indeed, the enthusiasm for full municipal ownership in the technical sense seems to have been stimulated by the thought that if title to the subways and their equipment vested in the city, the companies would not have to pay taxes on the property as a charge in advance of profits. The city was at a disadvantage because the existing elevated roads were held under perpetual franchises and because the present subway had been improvidently alienated for a long period. It is orthodox among the politicians of the dominant parties in New York, among the boss-selected judges and among the public officials generally, to bow the knee to vested interests. While the city's representatives might express a mild regret that their predecessors in some other era had seen fit to hand out perpetual franchise grants and enormously profitable leases, the claim or possession of these advantages by the companies already in the field was something to be accepted as an established fact. To attack an endless franchise merely because it was corruptly acquired or acquired by the exercise of squatter sovereignty, or merely because the company claiming the franchise has failed to perform its obligations in law and equity, or to cut down by competition the exorbitant profits of an overworked monopoly, is not looked upon with favor. Official New York has great respect for the princes of this world who have money and financial power, and regards it as unethical and impolitic to inquire too closely into sources or to question titles. And so, although the law specifically authorizes the public authorities to require the surrender of old outstanding franchises as a condition of the grant of additional rapid transit rights, no official body in New York has ever seriously contemplated such action.

Coupled with this official aversion to municipal operation and this precept of official ethics that whatever a public service corporation has, or stoutly claims, it is entitled to keep, is a timidity such as characterizes a man who is carrying all the debt he can and a good deal more than he wants to. New York City now owes nearly \$1,000,000,000 net, including its contribution to the new

subways. Its debts have been piled up in part by the issuance of fifty-year bonds for ten-year improvements and even for the purpose of funding current budget deficits. It has made a rule not to pay for anything now that can be saddled onto an unborn future. It rejects profits as if they were plebeian and courts extravagancies as the emblems of municipal dignity. It is always impecunious, and the unsatisfied judgments of civilization pile up against it year by year. So, now, in the city's great crisis, when it had one last opportunity to assume a dominant role in the development of its own transit facilities, the official mind was deterred from aggressiveness by its tenderness for vested privileges and was restrained from independent construction though by reflection upon the notes in the bank.

These three things made the city's position weak: (1) unreadiness to compel the surrender of existing perpetual franchises and long-term leases by whatever means might prove necessary, (2) unreadiness to undertake municipal operation even as a last resort, and (3) present inability to finance its big projects along established lines without help from private capital.

The New York subway contracts have the lure of a great enterprise. Though we may not approve of fifty-story buildings, yet it gives us a thrill of joy to look up at the Metropolitan tower, or the cathedral spires of the Woolworth building just across the corner from New York's little old city hall. There may be more art in the weather-stained structure of a century ago, but the mighty office building in clear relief against the shining sky the next fills our untutored souls with a kind of savage joy. So this subway scheme, second only to the Panama Canal as a tremendous engineering enterprise, attracts us with its very bigness. The "boosters" have the advantage over the "knockers," for the subway contracts, once signed, spell physical accomplishment as the immediate next step. New York's need of additional transit facilities has been scandalous for many years, with only partial and temporary relief from time to time. The Brooklyn bridge crush and the subway jam are barbaric institutions. Then, the profit-hunger of the real estate dealers, who hover like a Parthian army on the outskirts of the city, creates an atmosphere in which academic discussions about franchise principles meet with scant

toleration. The landmen have waited long for the expected brood of rapid transit birds to be hatched, often fearing that the eggs were rotten after all, and in the meantime have felt the frequent stings of a long tax-payers' winter.

These considerations explain why in New York the subway debate, which from a cool academic standpoint seems to run strongly against the contracts, was decided the other way by the preponderant influences that bore in upon officialdom. The people had no voice except the voice of clamor, pro or con, for in New York franchises are not subject to the referendum.

It would fill this magazine to present in detail the provisions of the contracts and arguments for and against them. No more subtle and complex partnership was ever devised. Law, engineering, accounting, and public policy are woven together in infinite detail. There are dozens of subjects upon which whole articles might profitably be written. The provisions in regard to recapture of lines, extensions, amortization, replacements, reconstruction, equipment, determination of cost, interest during construction, engineering and legal expenses, joint trackage rights, treatment of existing franchises, preferentials, depreciation, default, indemnity bond and deposits, operating routes, control of operating expenses, division of profits, taxes, debt discount, construction and operating accounts, "exchange of legs" are all interesting, controversial and important. It may be worth while, however, in bringing this article to a close to enumerate the chief points in the argument for and against the contracts.

In favor of the contracts, it was urged:

(1) That the dual plan as a route scheme meant the first effective step in remaking New York from a highly congested, unsymmetrical, long city into a less congested, more evenly developed, ground city.

(2) That the dual plan meant a great extension of the five-cent fare zone, and the provision of direct and convenient access to the business district for vast areas and populations now suffering from the inconvenience of indirect routes and double fares.

(3) That the dual plan utilized to the full not only extensive and in part unwise investments in subways and bridges already

made by the city, but also the existing facilities of the rapid transit companies already in the field, thus securing a maximum of service for a minimum of new investment.

(4) That the dual plan would at last put the city in control of future rapid transit development by the provision authorizing it to build and compel the companies to operate extensions whenever and wherever needed.

(5) That the dual plan would enlist the co-operation of private capital to the extent of \$165,000,000 of new money without which the city could not possibly carry through the immense and beneficent enlargement of rapid transit facilities immediately necessary for the public welfare, except after long, painful and disastrous delays.

(6) That the dual plan, while recognizing the right of the companies to maintain their present profits, definitely limited the preferential return on new capital to an amount substantially equivalent to interest and an amortization charge.

(7) That by the new contract with the Interborough Rapid Transit Company the leases of the existing subway would be levelled and made coterminous with the lease of the new lines, thus bringing the entire subway situation to a head at one time.

(8) That by the right of the recapture at any time after ten years of operation, this right being applicable to the entire new subway system operated by either company or to any one or more of several specified divisions of each system, the city would remain in continuous control of the situation with the power to shift lines from one company to the other, to throw both of the companies out and get a new operator, or to institute municipal operation.

(9) That under the dual plan not only would the city own the subways and their equipment from the beginning, even though it was to contribute only a portion of the cost, but the entire investment, private and public, would be amortized within the period of the contracts and possession of the property fully paid for an unencumbered by debt, would then revert to the city.

(10) That the elevated railroad improvements included in the dual plan would given the quickest possible relief to existing congestion of traffic.

(11) That the consummation of this vast scheme of rapid transit development would greatly stimulate the growth of the city, increase its value and add to its borrowing capacity and taxing resources, thus insuring the city's ability to recapture the subways whenever it might choose to do so and making the burden of any possible deficit arising under the contracts too insignificant to be considered.

On the other hand, those opposed to the contracts, while admitting the actual soundness of some of the arguments, just enumerated, and the theoretical soundness of most of them, contended that several of the advantages claimed could not actually be realized under the terms of the contracts as worked out in detail, that others were in no sense peculiar to the dual plan, and that the positively objectionable features of the contracts more than offset any possible advantages obtainable only through this plan.

Specifically, they urged:

(1) That the preferentials guaranteed to the companies were exorbitant, and that those of the Interborough in particular were the result of neglected depreciation and shameless congestion of traffic, the outgrowth of the company's reactionary policy in the past.

(2) That the Interborough's plans for financing its share in the scheme involved the payment of an outrageous tribute to J. P. Morgan & Company, the money kings, who were to get \$170,000,000 of Interborough new and refunding bonds at 93½, although these bonds would easily be worth par in the open market, and in fact were to be redeemed from time to time for amortization purposes at 110, while the Brooklyn company's financial scheme, after being worked out through the intricate convolutions of interwoven companies, showed an even worse result.

(3) That the allowance of 1 per cent per annum for a sinking fund covered a period of forty-nine years would enable the

Interborough to accumulate a surplus of from \$30,000,000 to \$60,000,000 within the life of the contract, out of which it would take care of the excessive discounts not directly chargeable to capital account under the contract, while the Brooklyn company would be enabled to charge its discounts to interest during construction, and thus keep for itself the surplus in its sinking fund.

(4) That the levelling of the leases of the present subway, instead of being an advantage to the city, involved the gift of \$30,000,000 or \$40,000,000 more to the Interborough Company during the life of its new contract.

(5) That the Interborough contract, by reason of the excessive preferentials both to the company and to the city, could never promise a division of profits, and hence would destroy the company's motive for economy and efficiency, leaving it free, without loss to itself, to wallow in extravagance and exploit politics on the city's margin.

(6) That by reason of the deficits the city would surely have to pay, its rapid transit bonds would remain subject to the debt limit and its tax resources would be drained to the utmost, thus nullifying for practical purposes the recaption scheme depended on to keep the city in constant control of the situation.

(7) That in amazing disregard of the first principles of equity, if not of law, the reconstruction and improvement of existing elevated railroads was to be charged entirely to capital account, fully amortized out of earnings by an annual preferential in advance of the city's interest on its investment, and then left at the expiration of the contracts — all paid for and maintained at the top-notch of efficiency — in the perpetual possession of the companies.

(8) That the city's subways would be hooked up by a sort of Morganatic marriage with the princely family of Perpetual Franchises, to be exploited for their benefit, and in the end cut off unfitted for independence by the habits of half a century.

(9) That the franchises for the elevated railroad extensions and improvements, running for eighty-five years, represented a

mere wanton and inexcusable throwing away of public rights, provision being made by which the companies would amortize out of their preferentials the entire investment in these improvements and extensions within the period of the subway contracts, namely, forty-nine years.

(10) That full municipal ownership (and municipal operation if the companies were unreasonable) of a comprehensive, independent system of new subways, financed so far as necessary by rapid transit certificates secured directly on the property and income of the subways, would be infinitely preferable to an unequal partnership with discredited corporations.

There is nothing new under the sun. In 1875, nearly forty years ago, New York debated whether the elevated roads should be constructed with public or with private capital. Then, as now, there was a sharp divergence of opinion among the city's official representatives. The prevailing view was that "private enterprise should most assuredly be given the preference in all works of this character, and an opportunity should be given to private capitalists to secure the advantages of investing in an undertaking that is in such popular demand as to be morally certain of proving highly profitable and remunerative."

Should we say that the enlightened aldermen of those days, whose words we quote, were some forty years ahead of their times? Or that the public officials of 1913, who have been so solicitous for the protection of private profits and who proclaim so confidently the triumph of justice and fair dealing in the new subway settlement, are still thinking in the grooves of 1875?

Mr. Moss.—I offer in evidence a paper found in the files of the mayor's office dated March 12, 1912, it being a report of the transit committee of the City Club, of which Henry C. Wright was chairman. I understand this report was filed with the mayor while the Wagner bill was pending, and before him for his signature.

The report is as follows:

March 12, 1912.

EFFECT ON THE PROPOSED SUBWAY OF THIRD-TRACKING THE
ELEVATED ROADS AND OF CONSTRUCTING A SUBWAY IN
BROADWAY, MANHATTAN, CONNECTING WITH LINES IN
BROOKLYN AND QUEENS.

As a part of the proposition which the Interborough Company has made for the construction of a new system of subways, they have asked that they be permitted to build a third track on the Second, Third and Ninth avenue lines, and also the privilege of extending the Ninth avenue across the Harlem river to connect with the new subway line in Jerome avenue, and an extension of the Third avenue line from Fordham avenue to connect with the proposed subway to be built in White Plains road, and a two-track extension of Second avenue across the Queensboro bridge.

At this point, the terms on which it is proposed to build such extensions need not be discussed, except to say that the terms are such as to make it improbable that the city will receive anything more than a comparatively few thousand dollars from the traffic at the new express stations.

It is generally assumed that the city is to build a subway in Broadway, Manhattan, to be used by the Brooklyn Rapid Transit Company, connecting with its lines in Brooklyn and extending over the Queensboro bridge, with traffic privileges over the lines running to Astoria and to Corona.

The third-tracking of the elevated roads and the building of the aforementioned line in Broadway will undoubtedly have some effect upon the amount of traffic which the subway system proposed by the Interborough Company will be likely to receive. No official estimate has been made of the increased capacity which the third-tracking is likely to produce. Unofficially, an engineer of the Public Service Commission has estimated that the present capacity of the elevated roads in Manhattan and the Bronx will probably be increased between 50 and 60 per cent by the completion of the third tracks. The transit committee has attempted to figure this increase in some detail. This increase it estimates to be 45½ per cent of its present traffic. For the purposes of this memorandum we will assume this increase to be 40 per cent.

These roads, in the year ending June 30, 1911, carried 301,449,292 passengers. The number of additional passengers which the roads can carry, after third-tracking, will, therefore, be about 120,000,000 per year. The third tracks could be completed in a few months. Let us assume that they would be completed in one year. It will require a minimum of four years to build the proposed subway. The elevated roads, with their completed third tracks, would be in operation three years previous to the opening of the new subway. The expected yearly increase of passenger traffic in Manhattan and the Bronx may be estimated at about 40,000,000. Inasmuch as the present subway has reached practically its maximum degree of congestion, the yearly increase of traffic will necessarily have to be carried by other lines than the subway. This new traffic will probably be distributed between the Manhattan elevated and surface lines, the Hudson tunnels, the Brooklyn Rapid Transit Company and the steam railroads. Since the estimated increase of passenger traffic for the next three years does not exceed 120,000,000, the additional capacity of the elevated roads alone produced by third-trackage will be ample to absorb this entire increase should it be called upon to do so. During the four years pending the completion of the new subway system new citizens of the city, who in quite a measure produce the additional traffic, will have established their homes along the various transit lines. In other words, when the new subway is opened there will have accumulated no traffic which has been unprovided for, and the proposed subway may, therefore, expect to receive little if any more than the natural increase of traffic for the first year of its operation. The proposed subway has little ground to expect to duplicate the first year's traffic of the present subway owing to the capacity and improved facilities of the various transit lines now leading from Manhattan.

In addition to the situation above outlined, we must assume that the Broadway subway will be put into operation at about the same time as the proposed Interborough system. This Broadway line will connect with two lines extending into Queens and probably will handle a good proportion of the traffic from that district, owing to the fact that passengers from that territory, desiring to reach the central part of Manhattan, would be obliged to trans-

fer if they used the Interborough system and the Steinway tunnel. If they desired to go to the lower end of Manhattan they could come across the Queensboro bridge by the Interborough elevated line and continue their journey, without transfer, by the Second avenue elevated road. Under these circumstances it is fair to assume that the Brooklyn Rapid Transit Company will secure quite a large proportion of the Queens traffic served by the two extensions. On the other hand, the Broadway line is to connect with the whole rapid transit system of the B. R. T. in Brooklyn, which will furnish to that district a very speedy and commodious means of reaching the central part of Manhattan. As a result of such increased facilities, the B. R. T. will be likely to secure quite a proportion of the increase of traffic which heretofore has located in Manhattan or the Bronx.

The present subway, during the year ending June 30, 1911, carried 276,704,796 passengers. On the basis of the traffic of the early months of the present year, it is estimated that the subway during the year ending June 30, 1912, will carry possibly 300,000,000 passengers. Taking into consideration the absorption of the natural increase of traffic by the elevated roads, by the proposed subway in Broadway and by other transit lines, it is reasonable to assume that when the new subway, which will include the old, proposed by the Interborough Company is open it will secure a traffic not in excess of 350,000,000 passengers the first year. The Interborough Company has estimated the traffic for its first year of operation at 415,000,000. In the opinion of the transit committee, based upon the tables herewith submitted and the facts above stated, there is no legitimate ground for such an estimate of the Interborough Company.

Estimated Increase of Capacity Produced by Third-Tracking the Elevated Roads of the Interborough Company by the Transit Committee of the City Club.

1. Present maximum train service, trains per hour, Third avenue, 62; Second avenue, 33; Sixth and Ninth avenues, 62.
2. Possible maximum train service with third tracks, Third avenue, 75; Second avenue, 75; Sixth and Ninth avenues, 75.

3. Increase in maximum number of trains with third tracks,
Second and Third avenues (150 trains), 58 per cent;
Sixth and Ninth avenues, 21 per cent.
4. Existing traffic, 1910-11 (June 20), 301,449,292.
5. Existing traffic: per cents to each road estimated, Second
avenue, 1-6 or 16 2-3 per cent; Third avenue, $\frac{1}{2}$ or 50
per cent; Sixth and Ninth avenues, 1-3 or 33 1-3 per cent.
6. Existing traffic: traffic estimated for each line, Second ave-
nue, 50,000,000; Third avenue, 150,000,000; Sixth and
ninth avenues, 100,000,000.
7. Increases in traffic with third tracks estimated for each line,
Second and Third avenues (58 per cent), 116,000,000;
Sixth and Ninth avenues (21 per cent), 21,000,000.
8. Total increase in traffic with third tracks, all lines,
137,000,000.
9. Total traffic with third tracks for each line, Second and
Third avenues, 316,000,000; Sixth and Ninth avenues,
121,000,000.
10. Total traffic with third tracks, all lines, 437,000,000.
11. Percentage of increase of traffic with third track, all lines,
45 2-3 per cent.

*Average Yearly Increase of Traffic on All Manhattan and Bronx
Transit Lines.*

Annual increases of traffic; subway, elevated, Manhattan surface.

1906-7...	38,880,627	Average for 5 years:	5) 177,681,659
1907-8...	23,670,909		35,536,332
1908-9...	26,782,022	Average for 3 years:	3) 115,130,123
1909-10..	61,918,857		38,376,708
1910-11..	26,429,244	Average for 2 years:	2) 88,348,101
			42,174,051
	<hr/>		<hr/>
	177,681,659		<hr/>
	<hr/>		<hr/>

No. 3.

ACCRUING DEFICITS.

Were the proposed new subway to be joined with the existing subway as one financial and operative unit, operated by one company, advantages of material value would be secured. It would be a one-fare system. This enlarged system would be operated by an experienced and competent operator. How much can the city afford to pay for these advantages? The amount that it would be necessary for the city to pay, if the proposal of the Interborough Company be accepted, can be approximated. The estimate of the transit committee is set forth in the following computation:

In this calculation the yearly increase of traffic is based on the calculations of the Interborough Company, and the only difference between the yearly traffic shown in the table of this memorandum and that set forth by the Interborough Company is that that company begins its calculations with 415,000,000 instead of 350,000,000, as used in this memorandum. The reason for using the smaller number has been set forth in Memorandum No. 2. The calculation has been carried to the year 1926, at which time the system would have a traffic of 712,000,000, which would be its maximum carrying capacity. This degree of traffic would produce a congestion in the trunk portion of the subway nearly 20 per cent greater than exists to-day in the present subway. Were the city to stand sponsor for a contract which would necessitate a traffic of 700,000,000, it would thereby endorse a condition of congestion in excess of that bitterly complained of to-day.

In the opinion of the transit committee two fundamental errors have been made by those who are supporting the Interborough's proposition. They have taken the figures of the Interborough Company, which are in error in these respects:

(1) They have assumed the first year's traffic to be much larger than it is likely to be, considering the increased facilities that are and will be furnished by other transit lines previous to the opening of the proposed system; and

(2) They have assumed that the completed subway would carry at its fullest congestion, 820,000,000 passengers.

If \$820,000,000 be divided by the total trackage of the system. *i. e.*, 206 miles, it indicates a traffic per mile of track of about 4,000,000 passengers. This amount does not exceed the traffic on the trunk portions of the present subway, but in using the number 206 as the divisor, they have neglected to note the all-important fact that the new subway has a much smaller proportion of trunk lines and a much larger proportion of feeders than the present subway, and the only fair way of comparing the two systems is to ascertain the relative number of passengers that would be carried upon the trunk portions. By this latter method of calculation, a traffic of 820,000,000 passengers per year would require the trunk portions of the new system to carry nearly 6,000,000 passengers per mile of track — a number which cannot possibly be carried.

These two errors, above noted, have seemed to show that the city, although accumulating deficits for a number of years would, nevertheless, after a time, reach a period when its deficits would be liquidated and thereafter begin to receive a profit. On the basis of calculation adopted by the transit committee — a basis which seems over liberal — the results would be as follows:

As previously stated, the proposed system reaches its maximum degree of saturation when it carries a passenger traffic not in excess of 712,000,000 passengers per year. This condition of traffic is reached in the year 1926. Up to and extending beyond this year, the city has been accumulating large deficits. Continuing beyond the year 1926, there will be a yearly deficit to the city of \$182,300. The company's deficit accrues yearly until the year 1924. At this point the company begins to run even and its deficit decreases yearly until 1934, when it is paid off.

The city continues to have a yearly deficit, and its accumulated deficit increases each year until the termination of the lease, when it amounts to \$62,008,220.

The above statements are made on the supposition that neither the city nor the company fund their deficits and pay interest thereon. It is unlikely, however, that this is to be the situation. It is the understanding of the transit committee, which it is unable to confirm, that during the conference between the Interborough Company and the city, the company first agreed that

the city should issue bonds to fund its accruing deficits. This proposition was rejected, with the understanding that the company would care for its own deficits. There is nothing in the proposition to indicate whether or not the company intends to fund its accruing deficits and to issue bonds against them. This, however, may be done. In case it is done, instead of all the company's deficits having been paid in 1934, there would still be an accumulation at that time of \$22,020,629. Inasmuch as the accruing interest would exceed the net profit to the company in any year, the accumulating deficit would reach the amount of \$86,219,578 at the end of the lease.

It is probably impossible for the city to fund its own deficits. It would probably be necessary to pay the deficits year by year out of taxation. By the year 1934 the city would have paid out for deficits \$56,539,220 and by the termination of the lease it would have paid out \$62,008,220. In addition, according to a provision in the proposition, it would be necessary for the city to assume any unamortized accounts of the company. The city, therefore, would be obliged to assume, in addition to its deficits of about \$62,000,000 the accumulated deficits of the company, amounting to about \$68,000,000. Though the city probably cannot fund its deficits year by year, nevertheless these yearly payments of deficits represent a burden upon the taxpayers of the city, a burden which may be legitimately figured to accumulate at the rate of $4\frac{1}{2}$ per cent interest. If so figured by the time the lease expires, the citizens would have paid for such deficits \$339,062,273. If there were added to this the accrued deficits of the company, which must be assumed by the city, the citizens would have paid out for the privilege of this new subway, \$425,281,851.

The language of the proposal which provides that the city shall assume any deficits not amortized at the end of the lease is as follows:

"If, however, such sinking fund of one per centum shall not be sufficient to amortize any part of the construction, betterments or improvements capital furnished by the Interborough Company, of said subways, or for betterments or improvements or, or additions to, the equipment, before

the expiration of the lease, the cost of such construction, betterments, improvements or additions, less the amount then accumulated in the sinking fund, shall, upon the taking over or termination of any lease, be assumed and paid by the city."

Inasmuch as a deficit would accrue each year during the lease, it would be impossible to exempt from the debt limit the bonds issued for the construction of the subway.

Extensions to the subway system, not provided for in the present plans, are to be built by the city and to be operated by the company as a part of the whole system; the equipment to be furnished by the company. Out of the first gross receipts the carrying charge, a sinking fund on equipment and operating expenses are to be received by the company. As to these charges, the proposal provides:

"If the income shall be insufficient to meet the foregoing charges, or any part thereof, the deficit shall be paid semi-annually by the city, either out of the city's portion of the earnings of the entire subway system, as described in section 13 of its proposal, or from such other sources as the city may see fit."

Inasmuch as few, if any, extensions would, or could be built, on which there would not annually accrue a deficit, it would be clear that such deficit would have to be met by the city out of taxation, since it would have received no profits from the operation of the main system. This situation would probably cause the city to hesitate to build extensions even where urgently needed. It will be noted, however, that under this proposal, the system in the congested portion, which is supposed to secure a large profit from short haul traffic, will not bear any of the burdens of extensions in the outlying district.

APPENDIX TO MEMORANDUM NO. 3.

Accruing Deficits.

The following computation is on the basis indicated:

1. Traffic for the first year of operation of the new system, 415,000,000 passengers.

2. Maximum traffic of the new system reached in 1926 and estimated at 704,000,000.

3. The operating expenses are assumed to include depreciation and are figured at the following percentages:

1917	53 per cent
1918	54 per cent
1919	52 per cent
1920	51 per cent
1921	50 per cent
1922	49 per cent
1923	48 per cent
1924	47 per cent
1925	46 per cent
1926	45 per cent

RESULTS.

If the city's deficits be funded at $4\frac{1}{2}$ per cent interest, they would continue to increase until the year 1926 at which period they would amount to \$35,009,012. From that year onward to the end of the lease they would decrease at the rate of \$1,839,500 per year. At the end of the lease there would still remain a deficit in the interest and sinking fund due the city of about \$6,000,000.

NOTE.—The mileage of the proposed system used in this memorandum was taken from the report of the Joint Committee of the Board of Estimate and the Public Service Commission dated June 5, 1911. This report indicated that the total amount of single track was 206 miles. The mileage has been somewhat amended in the proposition of the Interborough now under consideration, and according to the official figures of the Public Service Commission it now contains 220 miles of single track.

Inasmuch as the additional mileage indicated by the difference between 206 and 220 is on the feeders, the congestion on the trunk portion if re-figured on the basis of 220 miles would show a congestion greater than that indicated in the memorandum.

LEVELING OF LEASES.

The present subway was built under two contracts known as contract No. 1, which extends from Ann street to its northern limits, and contract No. 2, extending southward from Ann street to the terminus of the subway in Brooklyn. Contract No. 1 was

let for fifty years, with the privilege of renewal for twenty-five years, the terms of the lease to be readjusted at the expiration of the first period. Contract No. 2 was let for a period of thirty-five years, with the privilege of renewal for twenty-five years, with readjustment of terms at the expiration of the first period. Contract No. 2 expires in 1943 and therefore has thirty-one years yet to run; contract No. 1 expires in 1954 and therefore has forty-two years yet to run.

The Interborough Company in its proposition to the city agrees to the leveling of its present leases to a "period of forty-nine years from the time when the new subways are put into complete operation; provided, however, that the date from which the new leases shall run shall not be later than four years from the time that the formal contract is entered into between the city and the company. It proposes that its existing leases for the present subway shall be co-terminus with the leases of the new subway. Were this proposition accepted the lease of contract No. 1 would be extended eleven years, and contract No. 2, twenty-two years.

Under the proposition made by the Interborough the city would be required to pay yearly to that company, for the period of forty-nine years, a flat amount of \$6,335,000, supposed to represent the profits on contracts Nos. 1 and 2. Were contracts Nos. 1 and 2 to expire at the periods provided in the original leases, and to be renewed for a period of 25 years, on such renewal it is reasonable to suppose that the city would permit the Interborough Company to secure a profit not exceeding 6 per cent upon its investment. This estimate is based upon the facts that the general tendency to-day is to make more secure the investments in public service undertaking and to limit the amount of profit permitted.

Assuming that contracts Nos. 1 and 2 on the expiration of their first period, would be renewed on the basis indicated above, the question naturally arises, what is the city paying and what is the Interborough Company receiving in consideration of the leveling of the leases to a period of forty-nine years? This may be figured in the following manner:

According to reports made by the Interborough Company to the comptroller, during the year ending December 31, 1911, it

made profits over operating expenses, for contract No. 1 of \$6,172,338; for contract No. 2, \$2,376,165, making a total profit over operating expenses for the whole subway, of \$8,548,503. Out of this amount, the company pays out for taxes about \$300,000 and to the city about \$2,200,000 or a total of not less than \$2,500,000, leaving a net profit for the year of not exceeding \$6,050,000. The city is to guarantee the Interborough, according to its proposition, a flat amount of \$6,335,000 yearly on the new subway. This amount divided in the proportions of the profits received by contracts Nos. 1 and 2, would be for contract No. 1, \$4,573,500 and for contract No 2, \$1,761,500.

Let it be assumed that where the original leases to be renewed at the expiration designated in the lease, at 6 per cent for the remaining period, on a basis of an investment of \$36,000,000 for contract No. 1 the company would receive a yearly profit of \$2,160,000; and on the basis of an investment of \$12,000,000 for contract No. 2, a profit of \$720,000 per year. If these respective amounts be subtracted from the profits to be guaranteed by the city to the company, in case the leases are leveled on a basis of forty-nine years, the company would receive in excess of the 6 per cent profit, for contract No. 1, \$2,413,500, and for contract No. 2, \$1,041,500. These amounts will be received, respectively, annually, for eleven years and twenty-two years, making an aggregate for contract No. 1, of \$26,548,500, and for contract No. 2, \$22,913,000, or an aggregate amount for both of \$49,461,500. The present value of the aggregate profits of contract No. 1 and contract No. 2 may be ascertained by multiplying the aggregate for contract No. 1 by .135 and contract No. 2 by .175 these respective multiplicands represent an amount of money which, invested at 4.25 per cent would produce one dollar in forty-eight and forty-two years respectively. These periods represent the average time the company would be receiving their profits if the lease were leveled.

According to this calculation, the present value of the additional aggregate profits of contract No. 1 will be \$4,009,775, and for contract No. 2, \$3,584,257, or an aggregate for both of \$7,594,225. Stated in other terms, for the consideration of leveling the leases, the city practically hands over to the Interborough

Company, in cash, at the present time, \$7,500,000 which as before stated, if invested at 4.25 per cent will amount to \$49,461,500 at the expiration of the lease. The question at once arises whether the advantages to be gained by the leveling of the leases is worth the price which the Interborough asks. In attempting to answer this question, these facts should be taken under consideration:

Contract No. 2, *i. e.*, that portion from Ann street to Brooklyn, terminates eleven years before that of contract No. 1. It might, on the first consideration, seem that it would be advantageous to the city to have the lease for contract No. 2 expire simultaneously with that of No. 1. May not their expiration at different periods be an advantage rather than a disadvantage to the city? Contract No. 2 is by far the most profitable section of the whole subway. Its operating expenses for the year 1911 were but 25 per cent of its own gross receipts. Were the Interborough Company to lose control of contract No. 2 it would suffer serious loss. It might be claimed that contract No. 2, representing a line which is a continuation of contract No. 1, could not be separated from that line and operated independently, consequently it would be impossible for the city to do other than release it to the Interborough Company at its expiration. This statement would be true were it not for the fact that it would be quite feasible to connect the line from Ann street to Brooklyn with the proposed new subway line in the vicinity of the present United States post-office, or with the proposed Nassau street line in the same general vicinity. Such possible future connection would have to be provided for in leasing the proposed new lines with which it might in the future be connected.

One advantage of leveling the leases is to do away with the renewal period of both of the leases and thereby have the contracts definitely expire at the end of the first period. Another advantage would seem to be to have all leases expire simultaneously, so that the city could take the entire system over at one time. Both of these things are probably desirable and should be brought about if the price to be paid is not too great. Whether or not the leveling is worth about \$49,000,000 which the company asks for it and the city would be required to pay for it must

be taken under consideration. While this matter is being weighed there should also be considered the fact noted above, *i. e.*, that the city is now on the vantage ground of having contract No. 2 expire eleven years earlier than contract No. 1.

Mr. Moss.—I offer in evidence an editorial printed in the New York World, dated January 20, 1913, for the purpose of showing that all of the city officials were thoroughly advised of definite and tangible objections important enough to be presented in double-leaded form as this article was printed. It is entitled "Let the City Build its Own Subways—Twenty Reasons Why."

LET THE CITY BUILD ITS OWN SUBWAYS—TWENTY REASONS WHY.

The subway contracts with the Interborough and Brooklyn Rapid Transit Companies are set for hearings to-day. The Public Service Commission, anxious to complete bargains with these corporations before the expiry of the term of President Willcox, is straining every nerve to hasten the vast business. The time is appropriate for a temperate restatement of some of the reasons why these contracts should not be entered into, and why the city should build its own subways:

1. The Interborough bargain guarantees the company for forty-nine years, or fifty-three years, the extra profits it now takes through indecent overcrowding of the subway. It offers the city, as John Purroy Mitchel says, "The alternatives of perpetual congestion or a subsidization of private investors through the carrying of deficits in taxes." If proper facilities be provided, the extra profits of overcrowding will disappear, but the people must pay them. The guarantee is approximately $8\frac{3}{4}$ per cent on old and new capital.

2. Two rival systems of elevated railroads were chartered on Manhattan more than a generation ago, on condition that profits over 10 per cent should go to the city. To cheat the city, a holding company took both systems, watering the capital to keep down apparent earnings. The Public Service Commission would not now sanction such an issue, yet it proposes to condone and

guarantee for half a century the dishonest earnings of a fraud upon the city.

3. The proposed bargain with the Brooklyn Rapid Transit Company, while financially less objectionable, is equally indefensible, in guaranteeing profits upon old issues of watered stocks.

4. There is to be no public sale of company bonds. Millions of profits for insiders are insured by a 3 per cent brokerage allowance on them, though they are practically secured by public credit and are triple gilt-edged.

5. There is nothing to prevent company officials from participating in contracts; construction profits in the present subway were probably seven or eight millions. The new subways are four times as great an undertaking.

6. The Interborough Company is allowed to charge expenses other than construction during the work of construction. The city is not. During construction the company is allowed 6 per cent upon its money. The rate assumed to be allowed to the city on its money is $2\frac{1}{2}$ per cent.

7. In theory the city can in ten years "recapture" an east-side or west-side line. There is no provision for segregation of funds used in constructing and equipping the lines. This permits disputes as to bookkeeping. And —

8. The promised exchange of the "legs" of the old and new Interborough systems is subject to the provision that "the lien of any duly authorized mortgage now existing be not disturbed."

9. When Interborough extensions become profitable their earnings are pooled with the system and help meet its deficits. Until they are profitable the city guarantees the company against loss.

10. In calculating the interest guarantee of the Interborough its past earnings are swollen by an insufficient depreciation allowance. On this account alone, Mr. Mitchel estimates that the city allows the Interborough \$1,000,000 too much in every one of the forty-nine years of the contract.

11. The allowance for amortization of company funds — 1 per cent — is too high. Any schoolboy with his compound-interest tables can show that long before the end of forty-nine years the funds will be repaid in full, leaving millions yearly of extra profit.

12. The board of three provided to compute depreciation has one member representing the city, one the company, one to be selected by the Bar Association or the Chamber of Commerce. The city is in a minority.

13. Although railroad equipment is supposed to perish in twenty-five years, the city, in taking over the lines, is to pay for subway equipment of that age 64 per cent of its cost.

14. So eager is the Interborough to get its money that President Mitchel calculates it is repaid three times for construction expenditures:

(a) In the depreciation and obsolescence funds;

(b) In the "preferential payment" (guarantee) swollen \$1,000,000 a year as to past earnings by insufficient allowance for depreciation; and

(c) In the city's taking over the property at appraisal value at the end of the contract.

Mr. Mitchel also calculates that the company is repaid twice for equipment expenditures:

(a) As a part of operating expenses, under depreciation accounts; and

(b) Through the extra 1 per cent for amortization in the interest charge.

15. By giving the Interborough a large preferential profit instead of a contingent profit, the city, as Mr. Mitchel says, "removes all incentive to efficient management, once the preferentials have been safely earned."

16. The total cost of the two rapid transit systems may run millions beyond the estimates. The city pays all the excess. No adequate provision is made for reapportioning the profits.

17. There is practically certain to be a deficit on the Interborough capital, which the city must meet. The Legislative Committee of the People's Institute has estimated the total deficit during the life of this one contract at \$170,000,000 *without interest*. A continuing adverse balance amounts rapidly under compound interest. A million unnecessarily given by the city to the Interborough in the first year becomes eight millions in fifty-three years at 4 per cent.

18. With a continuing deficit, the bonds issued on the Interborough system can never be deducted from the debt limit. To that extent, the bargain leaves the city, when planning new subways, still at the beck of private capital.

19. Unlike the Interborough plan, the proposed Brooklyn Rapid Transit contract allows the city a chance to make money. Yet, how the people of Brooklyn love the B. R. T.; how they trust it to carry out its undertakings — was shown on Saturday when, at a hearing upon the B. R. T. proposal for which much could be said, police reserves were needed to keep order.

20. No dependence upon private capital is necessary. Under public pressure, funds have been provided for subway construction: First, by increasing assessments to provide more borrowing power automatically; second, by the Tracey decision defining the debt limit; third, by deducting self-paying bonds. These measures were carried through expressly to provide money for public-built subways. To that policy the city administration was bound by its pre-election pledges. There is money enough, with economy in other ways, to do this work.

We have enumerated only some of the more impressive financial reasons for rejecting these contracts. Quite as important are those intangible considerations which affect the city's prestige and raise or assail its self-respect. It is not good for any community to admit that five men, or three men, are stronger than five million people. It is not seemly that a great city, with the taxing power as means and an immensely profitable enterprise as an end, should surrender huge profits to corporations with an evil record

of past plunderings, that have not so far reformed as to seek its favors upon reasonable terms.

The companies have worn out the patience of the city officials and oppressed them with the fatalist's feeling that they must yield; just as they propose to wear out the patience of thirteen successive administrations, while these long contracts run, in settling to their profit a thousand vexed questions of interpretation.

We do not even flatter ourselves that the people, now, generally oppose these contracts. They, too, are tired. Old and young, men and women, they are tired of being mauled and pummelled six hundred times a year in the daily crush. Before their summons comes they want to see rapid transit upon some terms — almost upon any terms. There is an impression that the city is committed; that surrender is inevitable; that time would be lost if the contracts were rejected.

Surrender is not inevitable. No contract is binding until it is made. The companies by their own conduct have amply absolved the city from any obligations, even of the most punctilious courtesy, to deal with them. As for delay, more work is now in progress upon the new subways than the entire extent of the old system. It is still possible for the city to strike straight and sharp for complete independence in its transit undertakings. In a month it may be too late.

We conceive it to be our plain duty once more to enter protest against this costly and humiliating surrender of the public rights and the people's interests.

Mr. Moss.— I offer in evidence an extract of proceedings of the Public Service Commission for the First District of the State of New York (March 4, 1913) showing the dissent of the Public Service Commissioner Cram and the dissent of the Public Service Commissioner Maltbie, with the reasons given for their dissenting from the subway contracts.

(Same follows.)

(373) INTERBOROUGH RAPID TRANSIT COMPANY AND NEW YORK MUNICIPAL R. T. RAILWAY CORPORATION — PROPOSED CONTRACTS, CERTIFICATES AND AGREEMENTS — MEMORANDA OF COMMISSIONERS MCCALL, MALTBIE AND CRAM.

Commissioner Cram presented the following memorandum in opposition to the above agreements:

When the Public Service Commission decided against municipal operation of the municipally built subways, two members always dissenting, the alternative was operation by the traction trust.

The terms for such operation should have been made by the Commission for the trust, instead of which the terms of the operating contracts were dictated to the Commission by the trust, resulting in contracts which if carried into effect by the approval of the Commission will benefit 'The Trust' alone and be prejudicial to the public interest.

I vote against the proposed agreements —

Because they are subversive of the Constitution.

Because they capitalize indecency.

Because they ignore the right of labor and the labor laws of the State of New York, and

Because they offer no protection to the people who for two generations to come are to use them.

(Signed) J. SERGEANT CRAM.

Commissioner Maltbie.—“I have not taken the time of the Commission to give my reasons for voting against these contracts. I will save your time by filing a memorandum.”

Chairman McCall.—“You will be permitted to file your memorandum, Commissioner Maltbie. I will file a memorandum setting forth my reasons for voting for the contracts.”

The chairman thereupon directed that the said memoranda should be entered upon the minutes.

The memorandum filed by Commissioner Maltbie was as follows:

The contracts and certificates submitted for the approval of the Commission involve such a radical departure from the previous pol-

icy of the city of New York and from the principles which should govern the relation of the city and State towards private corporations that I wish to state my reasons for voting against their approval.

The city of New York needs additional transit facilities. They are needed for the symmetrical development of the entire city, for the relief of overcrowded areas, for the distribution of population into suburban districts, for the elimination of the indecent conditions that prevail during rush hours, for the normal development of our citizenship under conditions more favorable to physical and intellectual growth, and for many other reasons. I yield to no one in my appreciation of the city's needs for rapid transit relief, and for an enlargement of the single-fare area, and for the cheapening of transportation. But the proposed contracts are not the most direct and available means for accomplishing these results. They mortgage the financial future of the city, tie the hands of the city for a long period of years and so restrict the methods of control that the city will be unable to regain its independence except at a great sacrifice and only by means of a great struggle. The future welfare of the city is discounted in order to obtain a temporary advantage.

When it was proposed in 1895 that the city should build a rapid transit subway with public funds and lease it for a long period of years to a private corporation for operation, the plan was severely criticised, even though it involved an obligation upon the part of the private company to pay as a first charge against its gross earnings interest and sinking fund requirements upon the city's investment. The question was carried to the Court of Appeals and was declared to be legal by a divided vote of five to two in the Sun Printing and Publishing Association case (152 N. Y., 257).

The original subway contract is a conservative plan from the standpoint of municipal finance compared with the one now submitted for approval. The fundamental basis of the present plan, commonly called the "dual plan," is that the city shall accept all of the risk and that the companies shall virtually be guaranteed by a city investment which makes the original cost of the subway seem puny in comparison. The city is to enter into a partnership with two corporations and yet will have practically no voice in the man-

agement of the property which it is to own, and no more control than the Commission may have under a Public Service Commissions law over any other corporation. Of this plain Chief Judge Cullen of the Court of Appeals in his dissenting opinion in the Admiral Realty case (206 N. Y., 142) said:

"In my opinion the contracts about to be entered into by the city of New York, the execution of which it is the object of these actions to restrain, plainly violate the constitutional provisions restraining the power of the city to incur debt or dispose of its money, property or credit.

* * * * *

That this contract (Brooklyn contract) creates a partnership, and a very one-sided partnership at that, between the city and the railroad company seems to me entirely clear. Indeed, it is so denominated by the railroad company in its proposals to the city.

* * * * *

But even if we were to assume that a business partnership between a municipality and a private corporation would not in all cases conflict with the Constitution, the terms of this agreement are such as necessarily condemn it. * * * For forty-nine years the income realized from the city's investment of \$90,000,000 is pledged to secure an annual return of \$3,500,000 to the railroad company.

* * * * *

It would be ungracious not to make recognition of the great skill and ability displayed by the lawyers and financiers who have formulated these contracts in their efforts to make the evasion of constitutional restrictions practicable. But their successors may be found, and even their own services may again be brought into requisition. The corporations controlling the Brooklyn and the New York railroads each holds and operates many miles of street surface railroads. After their present success they may deem it wise to obtain a guarantee of the income of such property through a pledge of city property by a scheme similar to the present one. Of course, if subway roads can be combined with elevated roads, equally can they be combined with surface roads; but if we assume these companies will rest satisfied on what they

now obtain, there are other railroad companies in the city of New York, who, on the principle that equality is equity, will seek their chance at the city treasury. Nor do I see how the principle about to be decided can be confined to railroads. With the utmost respect for the majority of the court, I fear that the decision about to be made will lead to a practical nullification of the constitutional restraints by methods of evasion. It may, however, prove interesting to that school of publicists and political economists which has always maintained the futility of restraints imposed by the people themselves on their own extravagance in the expenditure of public moneys, on the ground that when the popular demand is not great the restraints are unnecessary, and when great they are unavailing."

Much has been said by the advocates of the dual plan regarding the advantages of a universal five-cent fare and of the necessity of stimulating real estate values. Many seem to labor under the impression that the dual plan proposes a universal five-cent fare, but as a matter of fact it does not. If the plan is carried out, there will be three different rapid transit systems, not to mention the steam railroads and the Hudson tubes. The elevated lines in Manhattan and the Bronx are to be independent of the subway. No transfers will be given except at one point, and the arrangement at this point is not obligatory under the contract. The Interborough subway system is not to give or accept transfers at other points of intersection with the elevated lines or with the Brooklyn (B. R. T.) system, and the surface lines in Brooklyn will be independent of the elevated lines. The contract does not even require the Brooklyn company to continue the transfers it is now giving between the elevated lines and the surface lines.

The real estate argument is specious. The mere transfer of population from one area to another cannot increase real estate values in the city as a whole, for what it adds to one district it takes from another. Those whose property is to be increased in value by any plan will be vociferous in their applause. They come to the front whenever any rapid transit line is under consideration. But until the line is actually built and the movement of population begins, no one not immediately adjacent to the new line can say whether or not his property will decrease in value.

Consequently, those who ultimately may be losers do not appear in opposition.

However, if the construction of new lines stimulates the growth of the city and results in an increase of population which would not have followed without their construction, the increase in values in sections affected by such lines will more than offset any loss in other sections, and there will be a net increase in values for the whole city. The result will be an increase in the borrowing capacity of the city and in the amount of money which can be raised by taxation.

The gain to the people in each case is more apparent than real, for increase of population means increase in the demands for public improvements and annual expenditures. As population increases, the city must provide more schools, more parks, more libraries, more sewers, better street paving, more policemen, more fire stations — indeed, every department of municipal activity immediately feels the increased demands upon it, and these demands grow as rapidly, if not more rapidly, than taxable values.

The taxable values of property in Greater New York are many fold those of a generation or two generations ago, and yet, if we may judge from universal testimony, the burden of taxation to-day is as heavy as it was then. If an increase in taxable values means relief, one would expect that taxation to-day would be less burdensome than it has been in any past period, but such is not the case.

The same is true of the debt limit. Every increase in taxable values has immediately been swallowed up by new bond issues, and the margin now available for rapid transit purposes would be very small if the bonds issued to build the present subway and to construct docks had not recently been exempted from the debt limit. It should be noted in passing that the leases under which such exemptions have been obtained are not in any way similar to the financial plan which we are now asked to approve for future rapid transit lines.

But whatever may be said regarding the advantages claimed for the dual plan in the directions noted applies equally to the plan which I have urged for several years, viz., the construction of a comprehensive system, capable of independent

operation or of operation in conjunction with either one of the two existing systems. It has been urged that an independent system would mean a double fare for a large proportion of the population; but it is my belief, and I so stated several years ago, that if the city showed a determination to proceed with construction of an independent system, the companies would soon recede from their position and submit plans for operation of the new system in connection with their own system. That this view was correct is shown by the offer of the Brooklyn Rapid Transit Company made nearly two years ago, in which it agreed to operate a comprehensive independent system in connection with its elevated lines for a five-cent fare. If this offer had been accepted, the five-cent fare zone thereby created would have covered a larger area and embraced a larger population than either of the five-cent fare zones of the dual system.

Further, the independent system recently outlined by President Mitchel and myself had as great a mileage and reached as wide an area as either system under the dual plan. It is, therefore, inaccurate to say that the dual plan, as now proposed, provided a five-cent fare for a larger area or a greater population than the independent system does, even though such system should be operated independently of existing systems. If operated in connection with the Interborough lines or the Brooklyn lines, it would have a greater value not only financially but from the point of view of social welfare and civic development than the systems which the dual plan contemplates.

The plan now submitted for approval in the form of several contracts and certificates is virtually an alternative to the one adopted by the board of estimate and apportionment and the Public Service Commission nearly two years ago. Under date of June 5, 1911, the Commission and a committee of the board of estimate submitted a report which was the result of many conferences extending over several months. A policy was outlined which received the unanimous approval of the board of estimate and the Commission as the one that, under the circumstances, was not feasible. It specified the lines to be constructed and the terms under which operating contracts would be awarded by the public authorities. It provided that if either company

declined to accept the lines and the terms offered to it by the city, an arrangement would be made with the other company for the operation of the entire system under conditions set forth in the report. It also declared that if both companies refused to meet the conditions prescribed in the report, the city would proceed to construct an independent system and arrange for its operation subsequently.

This report announced to the companies, and it was understood by everyone concerned, that a rapid transit policy had at last been decided upon, that there would be no wavering from the execution of this policy and that if either or both of the companies would not agree with the city, a practicable plan for independent action had been devised and would be proceeded with. In other words, it was positively and definitely announced that the final stage had been reached and that there would be no further hesitation upon the part of the public authorities in proceeding with the rapid transit plan agreed upon.

During June and July of 1911, the matter progressed until it became definitely known that the Interborough Company would not accept the conditions laid down by the city and that the city would not yield to the company's demands. The Brooklyn company, on the other hand, came to an agreement with the Commission and the board of estimate, and the arrangement was formally approved by both bodies.

Immediately thereafter, the Commission proceeded to carry out the program, so generally accepted as satisfactory and so widely announced as final. Construction contracts which had been pending before the Commission for nearly a year were awarded, others were advertised, and the expenditure of approximately \$30,000,000 was authorized. It was fully understood at the time that some of these contracts would not be adapted to any other scheme than the one decided upon in July, viz., the construction of an independent system to be operated by the Brooklyn company. Thus, not only by resolution but by step after step resulting in the signature of construction contracts, the Commission and the board of estimate recommitted themselves to the policy adopted in the report of the conferees.

Later in 1911, after this work had been begun and after the engineering department of the Commission had been directed to

proceed in haste with the preparation of other contracts, a new series of conferences was begun between certain members of the Commission, members of the board of estimate and officials of the Pennsylvania Railroad for the purpose of bringing the Interborough Company back into the field. These conferences were not initiated by any public official nor by an official of the Interborough Company, but after months of discussion it was announced that the Interborough Company would submit a new offer which would mean an entire realignment of the settlement with the Brooklyn company, a reconsideration of the policy which had been so boldly announced as the final word in the subway situation, and a reopening of the discussion with the Brooklyn company upon the terms which would be satisfactory to it if the Interborough guaranty to the company by the city of New York for forty-nine years of all operating expenses, taxes, etc., a lump sum of \$6,335,000 and 6 per cent, upon all new money provided by the company. The city is to put over \$70,000,000 into the project and not to receive a farthing on this investment until the company has received all of these payments for each and every year, with deficits cumulative at compound interest. It is said that such an arrangement is not a guaranty, but merely a preference. Call it what one will, the fact remains that the city is to use its faith and credit or taxing power to raise \$70,000,000 to put into the scheme and then to allow the company to take out all its preferential profits before the city is to receive any return upon its contributions. Under existing operating contracts, the city has a first lien upon earnings. Under the proposed contract, the company is to have the first lien, and the city is a more residuary legatee and is to have no voice in the management; its function is to furnish nearly one-half of the funds and take what is left of the earnings after the company and its bondholders have been satisfied. In this respect, the pending contract is much more favorable to the company than any contract or franchise that has ever been passed. All other public service corporations have to furnish their own funds and run their own risk. In this case, the city furnishes nearly one-half of the cost, assumes practically all of the risk, and allows the stockholders to have a virtual guaranty of over 13

per cent upon the old investment claimed by the Interborough Company. In this connection it should be noted that the stockholders are not required to contribute one dollar to the cost of the new lines. The entire cost is to be met by an issue of bonds.

2. PREFERENTIAL EXCEEDS EARNINGS.

The annual guaranty or preferene of \$6,335,000 exceeds by a large sum the amount earned after paying all expenses properly chargeable to income. The company has reported gross profits amounting to about \$2,220,000 in 1905-06, \$2,650,000 in 1906-7, \$3,780,000 in 1907-8, \$5,400,000 in 1908-9, \$6,770,000 in 1909-10, \$5,900,000 in 1910-11 and \$6,500,000 in 1911-12 — an average of \$4,740,000 for these seven full years. The reported average for the two years upon which the contract is predicated — June 30, 1909, to June 30, 1911, was about \$6,335,000. But in order to reach this amount the company ignored proper provision for depreciation, including the obsolescence, inadequacy and age, and distributed to stockholders dividends that were not earned. Now, it is just as important that a depreciation fund be accumulated out of earnings for the ultimate replacement of all plant and equipment as that cars should be painted and repaired, for everything must be replaced sooner or later. Cars wear out, electric plant becomes obsolete, mains become inadequate and new conditions and improvements send property to the scrap heap often long before it ceases to be operable.

Failure to provide a fund against the day when replacement is necessary leads to bad service, poor equipment, decreased profits, over-capitalization and perhaps bankruptcy. Such a policy was one of the causes which brought disaster to the surface lines in Manhattan, and any guaranty or preferential based upon earnings from which no deduction or inadequate deduction has been made for depreciation is as unsound and as false as it would be if the cost of the coal used had been omitted and earnings inflated to that degree. Allowance must be made for depreciation in order to determine what were the true earnings of the subway for any year, and no accountant of standing would sign a statement of profits based merely on cash receipts and disbursements.

Mr. Bion J. Arnold, in a special report to the Public Service Commission in 1908, said the policy of the company was a "seri-

ous mistake," and that "a depreciation reserve fund should be provided for which at least 1.5 cents a car mile must be allowed." In another place in the same report he estimated it at 3 per cent per year on actual investment in equipment. The Interborough's investment in subway equipment June 30, 1912, was \$35,000,000, which included \$1,311,000 paid for land for power and substation sites. Three per cent upon an investment of \$35,000,000 would amount to \$1,050,000, while 1½ per cent on the car mileage operated in 1912 would amount to \$968,000.

Upon the other hand, the annual depreciation based upon the life of property given in the contract itself would be at present about \$590,000, no allowance being made for depreciation of track, electric line construction, telephone and signal system, etc., all together about \$70,000,000 on the assumption that the replacement of those items would be charged directly to repairs. Buildings and structures are assumed to have a life of seventy-five years, power equipment, thirty years; composite cars, thirty-five years, and steel cars, 50 years, but Mr. Connette, the transportation engineer of the commission, in December, 1911, estimated the life of the buildings to be fifty years, composite cars, thirty years, and steel cars, forty years. The rule of depreciation filed with the commission by the Hudson and Manhattan Railroad Company, which operates a somewhat similar property, also estimates the life of buildings at fifty years and gives its steel cars an even shorter life, namely, twenty-five years. This evidence would indicate that the estimates used in the contract make little if any allowance for the factors of obsolescence, and inadequacy, which must, of course, always be taken into consideration. So far as actual wear and tear are concerned, the composite cars of wood with copper sheathing might perhaps last thirty-five years, but the probability that they will actually remain in service for that length of time is very slight, as all engineers are agreed as to the great risk of fire inherent in the operation of wooden cars in an underground railway, and Mr. Arnold definitely recommended their removal from the subway.

Upon the basis of 3 per cent of the value of the depreciable equipment only, the depreciation allowance for 1912 would be approximately \$800,000, or about one and one-quarter cents per

revenue car mile. If repairs alone be taken at three cents per car mile, a conservative estimate in view of the history of the company, the total combined amount for repairs and depreciation would be four and one-quarter cents per car mile. Applying this figure to the two years under consideration (1910-11) and assuming that the large expenditures in those years were very extraordinary, not likely to recur and not properly chargeable to capital account in any degree, there should have been a deduction from revenue of \$4,563,210, as against the actual deduction by the company of \$3,712,394, a difference of \$850,815, or \$425,000 per annum. Hence, even upon these conservative estimates, which probably understate the amount of depreciation and repairs and overestimated the probable life of the rolling stock, the preferential of \$6,335,000 is at least \$425,000 too large and exceeds by that amount at least the true average earnings for the two years in question which are certainly not more than \$5,900,000.

Those who support the contract have virtually admitted the truth of the charge that the preferential of \$6,335,000 does not represent the true earnings for any year; for since it was fixed, they have inserted in the contract a provision that the company shall provide, in part, for depreciation which has accrued and for which no provision has yet been made. Nevertheless, although convicted of error by the contract itself, they propose to pay the Interborough Company more than it has ever earned and under this head alone to allow the company at least \$20,000,000 or \$25,000,000 during the life of the contract.

Reported earnings for short periods are often very misleading. Two generations is a long period to guarantee 13 to 15 per cent upon an investment of any sort. The Metropolitan Street Railway Company guaranteed interest and dividends ranging from 7 to 18 per cent upon several other leased lines. Three of them have since been operated independently and have found it difficult to pay interest, to say nothing of dividends upon stock. In other cases companies have voluntarily abandoned long stretches of track that a short time ago were considered almost invaluable. In 1893 the Manhattan Elevated Railway carried over 221,000,000, had reported net earnings of \$5,500,000 and net income of nearly \$3,000,000, or almost 10 per cent upon the

stock. By 1899 the traffic was reduced to less than 175,000,000 and the reported net income fell to about \$1,120,000, or less than 4 per cent, on the stock. It later recovered but fell again when the subway was opened. But whatever may be the changes in the finances of the present subway, it is evident that true net earnings cannot reach \$6,335,000, in any one year after 1917, unless inadequate service is given congestion increased, the length of the average ride decreased or operating expenses decreased. These points are discussed in another place, where it will be seen that the tendency is for the length of ride to increase and operating expenses to increase.

3. PREFERENTIAL DUE TO BAD SERVICE.

The guaranty of \$6,335,000 is based upon earnings from inadequate service and indecent congestion. Nearly every report of the transportation department of the Public Service Commission relating to compliance with service orders during 1911 and 1912 shows violations of such orders, and in many cases the failures to provide adequate service were numerous and continued. The existence of indecent congestion is universally known and has no parallel in any civilized city. Yet it is proposed to guarantee for forty-nine years the earnings from such inadequate service and congestion. The company has no legal or moral right to such a guaranty. Under the law it must give adequate service, and when new subway lines are built, congestion ought to diminish. When adequate service is given and congestion diminished, then profits will decrease. But the guaranty to the company will remain at \$6,335,000, no matter what may happen. It should be noted further that if the company provides better service after the beginning of the new contract, the city will bear the expense. The payments to the company will not be decreased, but as the expenses will increase, such increase must be deducted from the amount payable to the city.

4. COMPANY PROFITS BY LEVELING OF LEASES.

The Interborough contract guarantees \$6,335,000 for many years beyond the termination of the present subway contracts. The present subway is leased to the Interborough Company under

two contracts. Contract No. 1, which covers the lines extending northward from the post-office, is to run for fifty years, from October 27, 1904, or until October 27, 1954. Contract No. 2, which relates to the line from the post-office to Atlantic avenue, Brooklyn, is to run for thirty-five years, from May 1, 1908, or until May 1, 1943. In each case there is provision for a renewal of the contract for a period of twenty-five years, but the rentals are to be readjusted at the beginning of this period; and if the city and the company cannot agree, the new terms are to be fixed by arbitration. Undoubtedly, the new rentals fixed in 1954 and 1943 would reflect the profitableness of the lines, and the compensation paid to the city would be much larger than the present contracts provide, *i. e.*, interest and sinking fund upon the city's investment.

The Interborough contract extends the life of these leases, which are extremely favorable to the company, in one case from October 27, 1954, to December 31, 1965, or even later, and in the other case from May 1, 1943, to December 31, 1965, or even later. In other words, the Interborough Company will be guaranteed clear profits of \$6,335,000 for over eleven years beyond Contract No. 1, and twenty-three years beyond Contract No. 2. Thus, the city is to surrender the prospect of large profits or much more favorable contracts after 1943 and 1954 and to substitute therefor its guaranty that the company shall have all that it can earn until 1917 and \$6,335,000 for each year thereafter. Assuming that in 1943 and 1954 the terms for the renewal period would reduce the profit to the operator to 7 per cent upon \$48,000,000, which the company asserts represents its original investment, the company will receive under the terms of the pending proposal upwards of \$45,000,000 over and above a reasonable profit of 7 per cent after 1943 and 1954, respectively.

In return the Interborough Company surrenders little, if anything. It gives up the right for a part of the renewal period under revised terms. In the case of Contract No. 2, it surrenders only two years of this period, and under Contract No. 1, fourteen years. The only advantage obtained by the city is the provision that both contracts will expire in 1965, but it would undoubtedly be cheaper to acquire one lease at the expiration of the other

under the power of eminent domain than to pay the enormous sum of \$45,000,000 under the plan proposed. The leveling of the leases is no concession from the company but a gift from the city.

5. FINANCIAL RESULTS DISASTROUS.

The various estimates of the financial results likely to follow from operation under the Interborough contract shows heavy losses for the city. Careful estimates have been made by Mr. Mitchel, president of the board of aldermen, the City Club, People's Institute, Citizens Union and others, but the Interborough Company's figures are more favorable to the city than any of these; and I shall use them, not because they are more exact or reliable but because they are more favorable.

The table below is based on the figures for traffic, operating revenue and expenses, taxes and rental as presented in the Interborough Company's memorandum of July 11, 1911, for the first ten years of operation of the complete system. For the eleventh year the traffic assumed in the supplementary report of the committee of the board of estimate and apportionment of May 22, 1912, is used as the basis, and this figure is virtually admitted to be the maximum future capacity. (Page 41 of that report.) Revenue deductions for the eleventh year are on the same basis as the preceding years (operating ratio of 50 per cent and \$2,700,000 rental).

Columns E and F vary from the estimates of the company only in this respect, that the company's estimates were based upon an investment of \$77,000,000 throughout, whereas the company's investment for initial operation is now fixed in the contract at \$80,000,000, and it is here assumed that after five years' operation another \$10,000,000 of capital will be required for additional equipment, etc. Interest on the amounts unpaid is figured at 6 per cent compounded annually. Possibly the company's deficit should be compounded at 5 per cent instead of 6. If this were done, the amounts in column F and in column G from 1926 on would be slightly reduced, but the change would not materially affect the results.

The last column represents unpaid interest at $4\frac{1}{2}$ per cent and unsatisfied sinking fund at 1 per cent on \$70,000,000 of city

bonds. Interest is figured on deficits at $4\frac{1}{2}$ per cent compounded annually. Before divisible profits arise, not only this deficit must be discharged, but also an additional 3.51 per cent on city money so as to give the city a total return of 8.76 per cent upon its investment. This would amount to \$2,475,000 a year, and with interest at $4\frac{1}{2}$ per cent compounded annually would amount to \$34,007,626 in 1927.

FINANCIAL RESULTS OF INTERBOROUGH PROPOSAL.

	Passengers.	Surplus over operating expenses, taxes and rental.	Surplus over company's preferential of \$6,335,000.	Six per cent on company's new capital.	Cumulative deficit.	City's interest and sinking fund charges unpaid.
A	B	C	D	E	F	G
1917.....	415,000,000	\$8,062,500	\$1,727,500	\$4,800,000	\$3,072,500	\$3,675,000
1918.....	450,000,000	8,940,000	2,605,000	4,800,000	5,451,850	7,515,373
1919.....	490,000,000	9,900,000	3,565,000	4,800,000	7,013,961	11,528,567
1920.....	525,000,000	10,727,500	4,392,500	4,800,000	7,842,299	15,722,353
1921.....	560,000,000	11,555,000	5,220,000	4,800,000	7,892,837	20,104,859
1922.....	592,000,000	12,350,000	6,015,000	5,400,000	7,751,407	24,648,578
1923.....	625,000,000	13,175,000	6,840,000	5,400,000	6,776,491	29,470,384
1924.....	660,000,000	14,050,000	7,715,000	5,400,000	4,868,080	34,471,551
1925.....	697,000,000	14,975,000	8,640,000	5,400,000	1,920,165	39,697,771
1926.....	736,000,000	15,950,000	9,615,000	5,400,000	2,179,625	42,979,546
1927.....	775,000,000	16,925,000	10,580,000	5,400,000	.....	43,398,626
1965.....	775,000,000	16,925,000	10,580,000	5,400,000	.....	85,502,740

If these estimates are approximately correct, several important facts follow:

1. The city will receive nothing from the system wherewith to pay the fixed charges on its investment of \$70,000,000 until 1926 — the tenth year of operation under the contract.

2. The city's total deficit will then be nearly \$43,000,000. In every year the current deficit will have to be met either by increased taxes or by city bonds. If the former, all the taxpayers of the city will be heavily burdened in order that the company may have vouchsafed to its various preferentials under an improvident contract. If the latter, the credit of the city will be reduced year by year through an unsound financial system — the issuance of city bonds to pay deficiencies in earnings on a city-owned subway.

3. Under either system, the bonds issued by the city to build the subway will not be self-supporting under the constitutional provision and cannot be exempted from the debt limit until 1927 under any circumstances; and if the courts shall hold that they are not self-sustaining until past deficits are wiped out, they will never be exempted. In neither case will the city be able to utilize the \$70,000,000 to be invested in subways for any purpose until after 1927 and perhaps not even then. If this amount is not exempt from the debt limit, extensions, which must be built by city funds (the company does not obligate itself to build them), will not be built at all or money must be found in other directions.

4. The city will never receive all of its interest and sinking fund charges (estimated at $5\frac{1}{4}$ per cent), for the annual interest on the accumulated deficit after 1926 will exceed the surplus earnings paid over to it in any year.

5. Obviously, the city will never receive 8.76 per cent on its investment if it cannot earn $5\frac{1}{4}$ and there will be no profits to be shared equally between the company and the city.

6. And as the company will not receive more than its preferentials, which are allowed from the very first year, there will be no profits to divide between the city and the company, and the company cannot increase its income before the lease expires.

It is argued by many that the foregoing estimates are too unfavorable to the city in respect to capacity and operating ratio. Others insist that the financial results will be more unfavorable than indicated. Obviously, as we are dealing with estimates for the future, neither statement can be demonstrated at present. However, there are many important facts which point to the conclusion that the city's receipts may be smaller during the life of the contract than indicated by the estimates given above.

In the first place, it should be noted that the maximum estimated capacity of the enlarged system is approximately two and one-half times the number of passengers now being carried by the subway. But the trunk capacity of the new system is only double that of the present subway, as there is to be one east side line on Lexington avenue and Fourth avenue and one west side line

on Seventh avenue and Broadway. The line in Brooklyn is to be extended several miles with two branches and three long feeders are to be added in the Bronx, two of which will be operated in common with the Manhattan Railway. The Steinway tunnel will be another feeder, and the traffic on the Queens extensions is to be shared with the Manhattan Railway and the Brooklyn company. As a result the new system will have a much larger ratio of branches and feeders to trunk lines than the present system. But the capacity of a system is not determined by the number of its branches and feeders but by its trunk line capacity; and if the trunk line capacity is merely to be doubled, it is certainly very generous to allow two and one-half times the present traffic.

Secondly, the estimate of the maximum capacity of 775,000,000 per annum is based upon the indecent and intolerable congestion that has prevailed during the last two or three years. It is clear that if the cars are to be jammed during the rush hours and if the rush hours are to be extended by forcing people to ride earlier and later because they cannot be carried during the hours most convenient to them, the capacity of any line can be increased by discommoding the people. But the fundamental purpose of the construction of the new rapid transit lines is to eliminate congestion instead of increasing it and to do away with the indecent crowding which we are now obliged to endure instead of making worse crowding necessary. If, in order to secure the financial results shown above, which are most unfavorable to the city, the new subways must be packed and jammed with humanity during a long rush-hour period morning and evening in order that the present abnormal profits of the operating company may be perpetuated, the city of New York is not to have transit relief but a continuation of transit congestion.

Thirdly, the length of ride tends constantly to increase. Since the opening of the subway the average haul has lengthened every year over the preceding year, as computed by the chief statistician of the Commission upon the basis stated in the annual reports of the Commission. The mere extension of lines into districts remote from the center increases the length of ride. The development of suburban districts means that the cars are crowded at the ends of the lines with through passengers to the exclusion

of those who would occupy seats for a short ride in the center of the city. It is obvious that a person riding ten miles produces less revenue than two persons each riding five miles, and that the cars are just as crowded in one case as in the other if one person enters the car after the other leaves it. The effect of the extension of lines and of the building up of remote districts, therefore, is to increase expenses and to diminish net income, for trains must be operated through to the termini in order to accommodate the residents of the remote districts.

The effect will be very marked in the Bronx at One Hundred and Eightieth street and in Brooklyn on the Eastern Parkway line. At the One Hundred and Eightieth street station, persons will leave the trains of the New York, Boston & Westchester Railway, operating principally in Westchester county, and will enter the trains of the subway to be carried from that point to the lower part of Manhattan and possibly to Brooklyn. According to the report of Mr. Bion J. Arnold, these persons will be carried at a loss. They will pay five cents to the subway, and the cost of transportation, including fixed charges, will exceed that amount. At the same time they will prevent residents of Manhattan, who would be carried at a profit, from securing convenient transportation. Similarly, the extension of the present line to East New York and Flatbush will mean that thousands of passengers who now enter the cars at Atlantic avenue station will board them much further out. The fares they pay will be precisely the same as at present, but the cost of transporting them will be considerably increased.

Fourthly, there is the recognized tendency for expenses to increase, due to additional taxes, higher wages, shorter hours of labor and higher cost of coal, steel and other materials and supplies. Furthermore, as the contract offers no inducement to economy after the company earns its preferentials, this also will tend to make operating expenses increase. Various demands will be made upon the company, and with the motive of self-interest lacking and the knowledge constantly before the managers that the city must pay the bill, what is to prevent the company from granting every sort of demand regardless of the financial consequences?

Fifthly, as the Interborough Company will obtain no further profit beyond its preferentials, and as subsidiary and affiliated companies will not share their profits with the city, there will be a strong inducement to shift much of the profitable work that would ordinarily be done by the parent company to the subsidiaries. In many instances it will doubtless be impossible to secure real competitive bidding without which it will be extremely difficult to determine whether the terms of the contract are fair and reasonable. In other instances, competitors may be frozen out because the parent company will be in position to favor one contractor and hinder another. As the Interborough Company and the interests that control it hold the majority of the stock in the principal surface car lines of Manhattan and Queens and lease the elevated roads, it will be to the interest of the Interborough Company in any arrangement between the various companies to favor the surface lines and elevated lines at the expense of the subways where the loss will be borne by the city alone.

As all expenses and preferentials are to be deducted before the city receives anything upon its new investment, any increase in expenses results directly in a reduction of the city's share. Thus, if a national income tax is levied upon all companies, it will virtually be paid in this case by the city. The general result of these various factors will be to force the city to choose between indecent congestion and financial loss. Yet at the very moment that the city must decide between these alternatives, the company will receive large profits and run practically no risk of loss.

6. NO INCENTIVE TO EFFICIENCY.

The Interborough contract offers no incentive or reward for efficient and economical operation, but invited waste, inefficiency and political manipulation. After several years have passed under the new contract, as shown by the foregoing table, the company will earn operating expenses, etc., the guaranty of \$6,335,000, and carrying charges upon the new money which the company is to provide. But the company is to receive nothing further until the city had been paid 8.76 per cent upon its money for each and every year, the early deficits with interest thereon being compounded semi-annually. The company will have received about

8¾ per cent upon the funds which it has provided, old and new, as a first lien upon the income; but it is practically certain that the company will receive no further sum before the termination of its contract.

Such being the case, it is evident that after the company has earned enough to pay its share, the incentive to operate the railroad economically and efficiently will be gone. The company's share will not be increased by economy and efficiency, and it will not be decreased by waste and inefficiency. Large salaries may be paid to officers and directors. Supplies may be purchased at high figures. Political demands may be granted. Unnecessary officers and employees may be put upon the pay-roll. Every such increase in expense after a few years will not reduce the company's return; it will be paid virtually by the city, for the city will receive no interest until all such expenses are paid.

7. MUNICIPAL OPERATION PREFERABLE.

The Interborough plan contains none of the advantages of private management but practically all of the disadvantageous features alleged against municipal operation. The principal factor leading to efficiency and economy in private business is hope for reward, but the proposed contract offers no such hope. The principal objection urged to municipal operation is the intrusion of partisan politics into management. The contract makes it easier for politics to get in and makes it difficult to drive politics out when once in than if the city operated subways directly. Favoritism and party politics can easily be injected without a remedy, for the company's officials are responsible in no way to the city or to the electorate. The city must pay the bills, but it cannot control the administration of the subway and cannot prevent waste and mismanagement. It is suggested that the control of the Public Service Commission will be effective to prevent all improper acts. But it should not be forgotten that supervision is not management, and that no method of control has yet been found that will be as effective as direct operation. If there is waste, inefficiency and neglect, some improvement may be secured by the vigilant exercise of the Commission's powers, but where the margin is so narrow, as in this case, the Commission might better operate

the subways than to undertake to tell an indifferent company how to do it. Further, every curtailment of the city's share in the subway revenues will redound to the benefit of the company, for it will tend to keep the city financially impotent and unable to exercise its right of recapture. Thus the company will have a powerful motive actively impelling it to waste the city's revenue resources.

8. DEPRECIATION FOISTED UPON CITY.

The contract relieves the Interborough Company from adequate provision for past depreciation and foists this burden upon the city. It merely requires that when the city takes over the equipment other than rolling stock, if it ever does, it shall be entitled to deduct \$3,000,000 from the price to be paid under contracts 1 and 2, and that at certain dates the company shall provide certain sums as follows:

July 1, 1939	\$1,618,950
July 1, 1955	736,150
July 1, 1957	127,950
July 1, 1960	425,100
	<hr/>
	\$2,908,150
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The board of consulting engineers who were asked to report to the Commission upon the amount of accrued depreciation up to January 1, 1917 (the assumed date for the beginning of the contract) reported it as practically \$6,000,000 upon that date, and advised that this amount of money should be in hand on that date with which to make renewals, etc., as needed. The contract gives the company from twenty-seven to fifty-three years within which to provide this fund. Now, it is evident that \$6,000,000 in 1917 is entirely different from \$6,000,000 paid at distant dates varying from 1939 to 1965. As a matter of fact, the present value upon January 1, 1917, of the amounts specified in the contract, upon the basis of 4½ per cent compound interest, is less than \$1,200,000. Hence, the gift to the company under this provision of the contract and the burden transferred to the city is over \$4,800,000.

The contract also excuses the Interborough Company from making any provision whatever for depreciation upon the railway structure, transmission and distribution cables and conduits, track and other equipment subject to accruing depreciation, except as above provided. The amount of this depreciation has not been computed, but it is considerable.

The direct effect of these provisions will be to inflate the amounts which must be set aside hereafter out of the earnings to provide for past depreciation; that is, the depreciation which the company has failed to provide for in past years and which the contract excuses it from providing for now must be made up during the remaining life of the property, and as the city is the residuary party in interest, the resulting increase in operating expenses will come out of the city's share.

All of the above figures are based upon assumptions most favorable to the company. The total life of the buildings and structures has been assumed to be seventy-five years, power equipment thirty years, and cars an average of forty-five years. The composite cars, which are inflammable, have been given a life of thirty years, although they will probably be removed from service within a few years and modern steel cars substituted therefor. It is inconceivable that the steel cars will have a life of fifty years in view of past experience, where improvements in car construction and railway operation have caused rolling stock to be scrapped within a much shorter period. If for any reason the various classes of property do not have the long periods of usefulness estimated, the whole burden of shortened life will fall upon the city.

9. RECAPTION HAMPERED.

Provisions for municipal recaption have been devitalized. Whenever attention is called to the injurious results likely to accrue to the city under the provisions of the Interborough contract, its proponents reply that the city has ample control of the situation through its power to terminate the contract and to operate the subway itself or to make another contract with a new operator. They admit that if the recaption features are ineffective, the city is bound hand and foot. But the plan is defective for the following reasons:

(a) The plan contains no provision for the termination of the contracts for the operation of the present subway before 1966. Hence, if the new lines are ever recaptured they must be operated independently, or recourse must be had to the swapping plan (to which I shall refer shortly), or the existing contracts must be terminated through the power of eminent domain. If the latter plan is adopted, the company may properly claim that its rights must be capitalized upon the basis of the favorable terms which it has obtained, and thus the city will buy back what it ought not to have granted.

(b) The new lines are disconnected and do not form an operable system. The Seventh avenue line is not connected with the Lexington avenue line. To provide a proper connection parts of both branches would need to be reconstructed, two expensive stations would need to be abandoned and a new crosstown line to connect the two branches constructed. According to the present plans, the Lexington avenue line is to be connected with the present subway by a diagonal line branch and station, extending through the property of the New York Central Railroad and private property at the corner of Forty-second street and Park avenue. The net cost of this connection is estimated at about \$6,500,000, which would be thrown away if the Lexington avenue line should be recaptured and made a part of an independent system, for a new station would need to be reconstructed in Lexington avenue or upon some other site, the proposed station being connected with the present subway upon the same grade and in such a way that the Lexington avenue line could not be connected with any other line without reconstruction. The connection between the Seventh avenue line and the present subway at Times square is similarly situated; and it is evident that when recaption is proposed the waste of several millions of dollars and the necessity of issuing bonds to build new stations and new connections will be used as a strong argument to deter the city from exercising the power of recaption even if it has the money or credit. A station could be built in Lexington avenue which would be as convenient to the public as the proposed diagonal station, which would be as useful to the new line,

if recaptured, as it would be to the present line, and which would cost from \$1,500,000 to \$2,000,000 less.

Furthermore, the new lines would terminate in Brooklyn at the Borough Hall, as the tracks in Fulton street, which are to be used to connect with these lines, are part of the present subway and could not be taken over under any provision of the old or new contracts. The new tunnel would thus be left without feeders or connections in Brooklyn, and would be almost worthless unless other lines were built. To connect with new lines, it would be necessary to abandon or entirely reconstruct the part of the new lines near the Borough Hall. But if the new tunnel were to be recaptured, and the Eastern parkway line (four tracks) left in the hands of the Interborough Company, its operation would be seriously handicapped as there would be only two tracks under the river. On the other hand, if the Eastern parkway line were recaptured, new tunnels would have to be built to connect it with Manhattan.

(c) To meet these difficulties, it has been proposed to permit the exchange of certain old and new lines, but under this swapping arrangement, neither the city nor the company would have a complete operating unit. For example, if the city took the west side lines (the present lines above Forty-second street and the new lines below that point), it must also recapture the Eastern parkway line. The city would then have two disconnected sections — (1) a four-track subway from Eastern parkway ending at Atlantic avenue, and (2) a two-track subway from the Borough Hall, Brooklyn, to Park place, Manhattan, there merging with a four-track line on the westerly side of Manhattan. To utilize the tracks in Brooklyn, it would be necessary to build a new four-track connection and another tunnel under the river. The company would be left without its present tunnel under the river, and the extra tracks in Fulton street, Brooklyn, would be useless. Indeed, the tunnel itself would be only half used, as the city's through lines in Brooklyn and the Brooklyn company's through lines into Manhattan would undoubtedly greatly reduce the traffic of the Joralemon street tunnel if it were left without any Brooklyn feeders.

On the other hand, if the city took the east side lines in Manhattan (the present lines below Forty-second street and the new lines above that point), it would likewise have to recapture the Eastern parkway line. Under that arrangement also the city would have only one tunnel to accommodate four tracks in Brooklyn, while the company's line would end at Borough Hall, and even more useless than under the preceding assumption. In making the trade the city would have to pay for its loss without itself getting the benefit. In other words, the city would have to stand the cost of a wasteful arrangement, the company being fully protected.

But even if this right to exchange were of value, it may be rendered nugatory by the provisions of the trust agreement between the Interborough-Metropolitan Company and the Windsor Trust Company, the trustee under the agreement for the bondholders of the Interborough-Metropolitan Company. The Interborough Metropolitan Company is not a party to the subway contracts, and it is possible that the agreement to permit the exchange of lines would be contrary to the provisions of the Windsor Trust agreement and thus made without authority by the directors of the Interborough Company, who are elected by the Interborough-Metropolitan Company, which owns nearly all of the stock of the Interborough Company.

(d) Whatever may be the practical value of the recaption provisions, they are certainly worthless unless the city has the funds with which to pay the amounts required by the contract in case of recaption. In the first place, no recaption is possible before 1927 and perhaps later. Then the city must pay over 118 per cent of cash cost, or about \$92,000,000 for what the company is to put in at once. If more equipment is necessary (about \$10,000,000 being estimated as needed for this purpose), the total will be about \$103,000,000. What prospect is there, particularly in view of the probable financial results of the Interborough's part of the dual system that the city will have \$103,000,000 in credit over and above its debt limit with which to buy out this company? The city's credit will be taxed to its utmost for the primary construction of the dual system and for the payment of deficits under the contracts. All funds available

for rapid transit purposes for many years will have to be devoted to the construction of extensions. No provision has been made whereby the city's total contribution to the construction cost of the subways may be applied to such sections or lines as the city may desire to take over at the time of the exercise of its election. Such a provision would have meant that the city would retake any or all new divisions up to a total construction cost equal to the city's total contribution without the payment to the Interborough of any capital sum. By the failure to make such provision, the financial practicability of the whole recaption scheme has been weakened.

It is also argued that if the city does not have the money, it may find some private company that will come in and provide the funds. But if the city, under existing circumstances, does not look favorably upon the independent operators who have been willing to step in, what is the likelihood that one can be found after the pending contracts have been signed and the city's credit mortgaged to the limit for many years to come?

In this connection it is pertinent to recall that the constitutional amendment and enabling act make it necessary, in order that any new investments for rapid transit purposes may become exempt, that they yield more than interest and sinking fund. If, therefore, the city earns only a portion of the interest and sinking fund, that will not suffice to exempt part of the bonds issued for such construction. The most favorable estimates which have been made by the advocates of the present contract show that there will be no income sufficient to exempt the entire investment for a long period of years to come.

10. CRITICISM OF COMPANY'S FINANCIAL PLAN.

The plan whereby the company proposes to finance its share of the undertaking gives excessive profits to the underwriters of the securities. The new bonds of the Interborough Company are to be sold to a banking firm at 93½ per cent of their face value. This banking firm is to sell them to a group of banks and individuals at 96, who, in turn, may sell them to the public at the market price. These bonds are secured by a first mortgage upon the property of the Interborough Rapid Transit Company, bear

interest at 5 per cent, payable semi-annually, become due on January 1, 1966, and are redeemable at any time in whole or in part at 110 per cent of their face value. These bonds are a first lien upon the income from the new and old lines (except for the rental payable to the city under contracts No. 1 and No. 2) and also upon the company's receipts from all other sources, including the profits of the Manhattan Railway lease. The city is to receive nothing upon its investment of \$70,000,000 until the company has received a preferential of \$6,335,000 and 6 per cent upon its new money — a total of $8\frac{3}{4}$ per cent upon its old and new investments in the subway, or nearly 7 per cent upon the entire amount of the company's bonds issued for all purposes. Thus, the subway preferential would carry all of the bonds if there were no other income. Deficits which may accrue in the preferentials during the early years are to be cumulative with interest compounded semi-annually. A sinking fund of 1 per cent is to be set aside to amortize the entire issue. Yet these bonds are to be sold upon such terms that the company is to net only $93\frac{1}{2}$ per cent of par. The bonds of the Interborough Company issued a few years ago brought more by several points and were selling above par in the market nearly two years ago, after the Interborough Company had refused to accept the offer of the city and when it was not expected that the present issue would be redeemed. Some of the smaller public utility companies supplying suburban districts have issued 5 per cent bonds at better rates — companies that have no guaranty from the city, that are subject to public regulation as to rates and that are known only to a limited number of investors.

It is asserted by the proponents of the dual plan, first, that $93\frac{1}{2}$ per cent is a fair price for the bonds, and, second, that the price at which these bonds are marketed has nothing whatever to do with the subway contract between the company and the city.

If the former statement is correct, the dual plan must be unsound, for a company which, with all of the guaranties, preferentials, safeguards and protection provided by this contract, cannot sell a fifty-year 5 per cent bond at more than $93\frac{1}{2}$ is certainly in an unsatisfactory financial position. Whether $93\frac{1}{2}$

is really a fair price for these bonds could easily have been ascertained by public sale of the bonds, as is done with New York City bonds and with securities of public utilities in Great Britain. If as a result of properly supervised public letting, the net income received by the company were only 93½, there would be no just ground for complaint. But to issue these bonds without competitive bids at a discount of six and one-half points to one firm of bankers, which in turn will hand them over to a syndicate at an advance of two and one-half points to be sold finally to the public at what they are really worth is open to criticism as was the private sale of United States bonds under President Cleveland's administration. Indeed, the usual method for determining the value of property is by public sale, and no good reason has been advanced why this method should not have been adopted in this case. If, as is usually stated, these bonds have been made marketable by the investment by the city of \$70,000,000 and by the preferred lien of the company's fixed charges, and if a profit is to go to anyone through the sale of these bonds, why should not the citizens of New York who are to furnish the credit and pay the deficits be allowed a first chance at this bargain?

The statement that the price at which the bonds were issued has nothing to do with the provisions of the pending contract is inaccurate and misleading. In the first place, if the bonds were not sold at a discount, it would be unnecessary to include 3 per cent for debt discount and expense in the company's contribution to the cost of construction and equipment. Only \$77,600,000 would be charged to cost instead of \$80,000,000 as under the pending plan. That would mean a saving of \$144,000 a year in the preferentials allowed to the company, an increase of \$144,000 in the amount paid to the city and a corresponding reduction in the recaption price.

Secondly, there is no limit whatever upon the discounts which may be charged to cost of additions and equipment supplied after initial operation, and as interest and sinking fund charges upon the face value of the bonds will be a lien prior to the city's return even on its initial investment, public interests are ultimately affected by the price at which the company's bonds are sold, and in

case of recaption these unlimited discounts on bonds issued for additions will form a part of the purchase price to be paid by the city.

Thirdly, during the conferences leading up to this contract the argument was repeatedly made that concessions must be allowed to the company because it could not finance its operations on a 5 per cent bond at par, but must pay approximately $5\frac{3}{8}$ per cent for its money. If the sale price of the bonds has nothing to do with the problem, why is it that the company was allowed 15 per cent profit upon its investment in case of recaption, to run through the entire life of the lease, even though the company was already protected against losses by the arrangement to make its preferentials cumulative at compound interest? If the sale price is irrelevant, why is the company allowed 6 per cent, which is greatly in excess of what is needed for interest and for amortization in a period of forty-nine years of 5 per cent bonds issued at par, even though redeemed at 110?

These financial points are not unimportant. Take, for example, the terms upon which the city may recapture the property, and assume that the bonds were sold so as to net the company 97 instead of $93\frac{1}{2}$. In that case the profit to the company in case recaption by the city at the earliest date permitted would be about \$14,000,000. If recaption were delayed to the fortieth year of the contract, the company would have amortized all of its bonds, even if they were all redeemed at 110, which is too high, and the amount to be paid by the city would be over \$21,000,000, a clear profit to the company. If recaption were delayed until the end of the lease, when the city would pay nothing for property, the company would have amortized all of its bonds and built up a surplus of over \$48,000,000 which represents the excess accumulations of the sinking fund during the last years of the lease under the terms of this contract. That profit would not be shared with the city either directly or indirectly. If the bonds were issued at par instead of at 97, as above assumed, the profit to the company would be still greater whether the city exercised its right of recaption or permitted the contract to continue until the expiration of the lease. With such profits for the company in prospect, the city would not have been forced to yield point after

point "in order that the company might come out whole" under a plan which permits the Interborough bonds to be sold at 93½. If these bonds had been sold at par, the financial terms of the contract would certainly have been much more favorable to the city.

In the figures used above, it has been assumed that the bonds would be redeemed at 110 per cent of par; for the plan contemplates that the Interborough bonds shall be issued at 93½ and may not be called or redeemed at any time at less than 110. When the present mortgage was authorized in 1908 the commission refused to sanction a redemption price of 110, and required the company to reduce the figure to 105. As the first issue of bonds was to net the company 95, it was considered that a 10-point difference between issue price and redemption price was ample. It is now proposed that the issue price shall be 93½ (net to the company) and that the redemption figure shall be 110 or a difference of 16½ points. It is suggested that this wide margin is necessary to enable the bonds to be marketed at 93½; but if 10 points was sufficient in 1908, what has changed the situation to make 16½ points mandatory in 1913? This is the first instance in the history of the commission that a mortgage has been approved in which the redemption price of 5 per cent bonds has been fixed at 110. If the commission had yielded to the request of the company in 1903, the company would to-day have to pay about \$1,700,000 more to redeem the bonds now outstanding.

11. INTEREST DURING CONSTRUCTION.

The contracts permit the company to charge 6 per cent interest during the construction period upon the funds provided and requires only a credit of a 2½ per cent upon funds in bank. The allowance of 6 per cent runs through the entire construction period, and the company pays but 5 per cent interest on its bonds, or about 5¼ per cent including the 3½ per cent of discount, which it may not include in cost, there will be a profit to the company of three-quarters of 1 per cent upon the funds provided during the entire construction period. Upon the money in bank the company is to be charged with only 2½ per cent but it is probably that with such large sums available for deposit the company could

secure from 3 to 3½ per cent and by this means make an additional profit of from ½ to 1 per cent. There is no justification in this contract for such a profit. The amount included in cost to represent interest during construction should be the net amount actually paid by the company. The excuse given is that the Brooklyn company has a different arrangement and that in order to put the two companies upon the same basis, the Interborough Company must be allowed a profit. It is obvious that one mistake does not justify another and that even if one were made in the case of the Brooklyn company that is no reason the Interborough Company should have an unearned profit.

12. PROBABLE EXTENSION OF CONTRACT.

The commencement of the lease on January 1, 1917, and its expiration on December 31, 1965, are both contingent upon the completion of the William street subway and the new tunnel under the East river, by the end of 1916. The William street subway and the East river tunnel are likely to involve the most difficult engineering problems that will be encountered in the course of the construction of the entire system, and no one can foresee at this time the extent of the delays that may arise in the completion of these sections. The two east and west side lines from lower Manhattan to the Bronx may be in operation several months or a year before the tunnel is completed, but the lease is not to begin until the tunnel is finished.

Note the results of this delay. The period of the company's separate operation of the present subway, with its ever-increasing profits will be prolonged. The forty-nine-year period of the lease will be set forward. Every day of postponement will mean an additional day after December 31, 1965, of guaranteed preferentials with the extension of contracts No. 1 and No. 2. When the "H" system has been completed, the Interborough Company will have an operable system without the Brooklyn lines, and there is no adequate reason why the lease should not go into effect then.

II. *Brooklyn System.*

The other half of the dual plan covers a rather complicated arrangement with several companies in what is ordinarily called

the "B. R. T. System." The Brooklyn Rapid Transit Company is a business corporation. Among the companies which it will control if the dual plan is carried out are the New York Consolidation Railroad Company and the New York Municipal Railway Corporation. The former is a new corporation recently created by the consolidation of the Brooklyn Union Elevated Railroad Company, the Sea Beach Railway Company and the Canarsie Railroad Company — all subsidiaries of the B. R. T. Company, which will hold the stock of the Consolidation Company.

The New York Municipal Railway Corporation is another new company formed for the purpose of entering into a subway contract with the city of New York, this contract being one of those now before us for approval. The stock of this company is to be held by the Consolidated Company, but the control obviously lies with the parent company, the B. R. T. Company.

The final effect of a complex system of inter-company leases and contracts between the Consolidated Company and the Municipal Railway Corporation, will be that the Consolidated Company, if the plan is carried out, will become the operating company for all of the lines covered by the subway contract. There are also before us two certificates relating to additional tracks on the B. R. T. elevated lines and extensions thereto. These certificates are to be issued to the Municipal Railway Corporation, but all of these lines and additional tracks will be operated by the Consolidated Company. The ultimate effect, therefore, will be that the Consolidated Company will operate all of the new rapid transit lines owned by the city and leased to any subsidiary of the B. R. T. Company, all of the existing elevated roads, and additional tracks and extensions thereto owned by any subsidiary of the B. R. T. Company (all of the existing roads). For convenience, this company will be referred to as the Brooklyn company, and the system of rapid transit lines to be operated as a unit will be called the Brooklyn system.

The provisions regarding the operation of all of these lines, new and old, city and company, are the same in the contract and certificates for the period of the subway contract, which is to expire December 31, 1965, unless extended. Hence, in stating the operating results of these certificates and contracts for the next fifty-three years, we may treat them as one agreement.

1. BROOKLYN COMPANY'S PREFERENTIAL.

The Brooklyn contract virtually guarantees to the company for fifty-three years all operating expenses, taxes, rentals, etc., a lump sum of \$3,500,000 and 6 per cent upon all new money provided by the company. The city is to put about \$110,000,000 into the project and, as in the case of the Interborough Company, will not receive any return on this investment until the company has received all of the above payments for each and every year with cumulative deficits (though not at compound interest as in the case of the Interborough). The general objections to such a plan, which makes the city virtually a residuary legatee and gives to the company a first lien upon all of the income from the city's property, have already been stated in connection with the Interborough contract and need not be repeated here.

2. PREFERENTIAL EXCEEDS EARNINGS.

The annual guaranty or preference of \$3,500,000 exceeds by a large sum the amount earned after paying all expenses properly chargeable to income. The reported net income of the Brooklyn elevated lines (including Sea Beach line) for the year ending June 30, 1911, after paying operating expenses, but no rentals, was about \$3,250,000. No previous year showed even this net income, and in order to reach this amount the company ignored proper provision for depreciation and ultimate replacement of its property. Upon June 30, 1911, the companies operating these lines had less than one thousand dollars in their depreciation funds. Yet the board of consulting engineers, which was asked by the Commission to report upon accrued depreciation, reported that on July 1, 1912, the depreciation upon rolling stock alone was over \$2,500,000, and on January 1, 1914, would be nearly \$400,000 more. Mr. Bion J. Arnold, in the Coney Island case in 1909, estimated that the accrued depreciation upon all the property operated by the Brooklyn Union Elevated Railroad Company was from 15 to 20 per cent, including structure, tracks and equipment. Upon this basis, the total depreciation would be about \$6,000,000. It is clear, therefore, that the company has not set aside a sufficient amount in past years and that

the reported earnings are much larger than they would have been if proper provision for depreciation had been made.

Upon the basis of the estimated life of rolling stock fixed by the board of consulting engineers, the annual allowance for depreciation would be nearly \$250,000 on rolling stock alone. The contract allows the company to set aside during the first year of operation under the lease 3 per cent of gross earnings. Applying this to the year 1910-11, the payment into the depreciation fund would have been about \$230,000. Upon this basis of 1½ cents per car mile, as recommended by Mr. Arnold for the Interborough Company, the annual reserve would be \$450,000. At the rate of 1 cent per car mile it would be \$300,000.

Assuming \$300,000 to be a fair amount for annual depreciation upon all of the property, it follows that the net income for the year 1910-11, without deducting rentals actually paid, was less than \$2,950,000. Upon this basis the preferential exceeds the actual net income by \$550,000 per annum or a total during the entire life of the contract of more than \$25,000,000.

It should be noted also that the contract permits the company to deduct as a first lien upon gross earnings the rentals actually and necessarily payable by it for the use of property in connection with the old and new lines operated by it, under contracts or leases approved by the Commission. During the year ending June 30, 1911, the companies operating the Brooklyn elevated lines paid out of their net income rentals amounting to about \$330,000. Of this amount more than \$250,000 was for the rental of cars owned by the Transit Development Company, another subsidiary of the B. R. T. Company. It is practically certain that the Brooklyn company will ask authority to deduct from gross earnings under the contract between \$80,000 and \$100,000 to cover miscellaneous rentals, and one contract calling for an annual payment of \$25,000 has already been approved by the Commission. If the company continues to run cars owned by the Transit Development Company, the gross rentals will be between \$300,000 and \$350,000 per annum. As these rentals in 1910-11 were paid out of the net income reported at about \$3,250,000, they should in all fairness be paid by the company out of its preferential of \$3,500,000, but as they are to be deducted from gross earnings,

the preferential allowed to the Brooklyn company is increased thereby. Even at \$100,000 a year, the total amount during the period of the contract will be about \$5,000,000.

3. AMORTIZATION OF COMPANY'S PROPERTY.

The cost of improvement and reconstruction of existing lines is to be amortized prior to any payment to the city for interest and sinking fund; yet the company is to retain ownership of this property under perpetual rights. Before the city receives a farthing upon its investment of \$110,000,000 the company is to be allowed 6 per cent upon its total contribution and cost (including 3 per cent for brokerage and discount), 5 per cent for interest and 1 per cent for the sinking fund. Prior to this deduction the company is to maintain the property out of income and provide for a depreciation fund to prevent the investment from being impaired to any degree. The result of these provisions is that at all times the company will have property in first-class condition, a fund with which to replace it when worn out or rendered useless because of obsolescence, inadequacy or any other cause, and also a fund gradually accumulating which long before the expiration of the lease will be sufficient to pay off the bonds issued to improve or reconstruct the property. In other words, when this period is reached the company will have a valuable property free and clear from all indebtedness, and it will have been paid for ahead of the city's interest and sinking fund charges on funds raised upon the faith and credit of the city of New York.

It is not only proper but it is necessary that the cost of property which is paid for by the company and which is to pass to the city at a certain date should be amortized out of earnings before that date is reached. Otherwise the company would have securities outstanding without a corresponding amount of property. But where is there any justice in a plan which authorizes a company to provide for the maintenance and replacement of that property and the amortization of its cost ahead of the city's contribution, when at the same time it is to continue to own the property? Of course, there can be no objections, if the company so desires, to an amortization of its own bonds out of its own share

of the profits, but it is not fair for the city to be obliged to contribute out of its share.

This part of the subway contract relates not merely to alterations and minor changes made necessary to carry out the dual plan, but includes important improvements and additions to the property of the Brooklyn company. It will cover the laying of additional tracks, the strengthening of existing structures, the improvement of stations and platforms, the erection of a very expensive terminal at Coney Island, a new elevated extension and a connection between two of the existing elevated lines. No detailed estimate of the cost of this work has been presented to the Commission, but the amount will certainly be \$10,000,000 and may exceed \$15,000,000.

This feature of the contract may be unconstitutional, but if not illegal, it is certainly improper. It has been continually asserted by the advocates of the dual plan that the fundamental basis of each contract is that the company shall receive no profit upon its new investment until the city's fixed charges have been met on its contribution. In the case argued before the Court of Appeals, it was stated by the counsel to the Commission that neither company should receive any return upon its new investment in excess of the necessary fixed charges and that the property to be amortized out of payments made in advance of the city's interest and sinking fund would be only the property belonging to the city and property which would revert to the city free and clear of all encumbrance. This will not be true if the contract is approved as it stands.

4. FINANCIAL RESULTS UNFAVORABLE TO THE CITY.

As in the case of the Interborough contract, the financial results likely to follow from operation under the Brooklyn contract indicate heavy losses for the city, especially during the first ten years of operation. The first deductions from earnings after rentals, operating expenses and taxes have been paid are the preferentials of \$3,500,000 and 6 per cent upon the company's new investment. It is estimated that the company will need \$61,000,000 to cover its contribution towards city-owned lines, new equipment, reconstruction of existing lines, additional tracks

and extensions. Six per cent upon this amount will mean an annual fixed charge of \$3,660,000, which, added to the fixed preferential, will make a total of \$7,160,000. In other words, before the city will receive one dollar as interest or sinking fund charge on its investment of \$110,000,000, the system must earn over and above all operating expenses, taxes and depreciation charges the sum of \$7,160,000.

Computing the payments due the city at $5\frac{1}{4}$ per cent, $4\frac{1}{4}$ for interest and 1 for sinking fund, the city's annual charge upon its investment will be \$5,775,000, which, added to the company's preferentials, will mean total fixed charges of \$12,935,000 which must be earned before there will be any profits to be equally divided between the company and the city.

According to the company's estimate of June 27, 1911, the company will earn a sufficient amount during the first year to which the pooling of receipts from the old and new lines applies, to pay all expenses and its own preferentials. The company does not expect in any event that there will be deficits in its preferentials to any considerable degree from the beginning of pooling. Consequently, the omission of the provision to be found in the Interborough contract, that the company's deficits shall be cumulative at compound interest, is not important. But as the system will not earn a sufficient amount to pay the city's fixed charges, for ten years from the date of pooling, using the company's estimates as to earnings, the city will be obliged to finance any interest it may have to pay on deficits through taxation or by the issuance of city bonds, as there is no provision whatever for the charging of interest on the city's deficits against the income of the system. This loss may be considerable, and if paid from taxation will be a burden upon many taxpayers who will not have received any corresponding benefit. If this interest is paid by the issuance of city bonds, the borrowing capacity of the city will be reduced thereby.

Although, according to the company's estimate of earnings, the income from the system will be sufficient in the twelfth year, or thereabouts, to pay its preferentials and the fixed charges upon the city's investment, the cumulative deficits for the preceding years even without interest will be probably about

\$30,000,000. On the assumption that the traffic will steadily increase, this deficit will decrease year by year after the twelfth year, but it will be many years thereafter before the deficit will be entirely wiped out and the system become self-supporting. In the meantime, the deficits must be met either by taxation or by the issuance of city bonds. If the former, the taxpayers will be heavily burdened; if the latter, the borrowing capacity of the city will be greatly reduced.

It is obvious that the exact dates when the city's deficit will cease to increase and ultimately be wiped out will be determined very largely by the operating ratio, and the rapidity with which traffic upon the Brooklyn system grows. Assuming an operating ratio of 50 per cent to cover rentals and depreciation as well as general operating expenses and taxes, the system will need to carry over 510,000,000 passengers per annum in order to pay the company's preferentials and the city's fixed charges.

In connection with the Interborough contract, I have discussed the general factors which tend to increase operating expenses. The statements there made apply with equal force to the Brooklyn contract, with these important exceptions. Because of its limited facilities for crossing the East river, the Brooklyn Elevated system is not now operated to its maximum capacity. With two new tunnels under the river, enlarged use of the Williamsburg bridge made possible by the operation of trains from Delancey street into lower Manhattan, and the third tracking of the elevated lines in Brooklyn it will be possible to increase greatly the carrying capacity of the Brooklyn elevated lines. In this respect these lines differ markedly from the Interborough subway. The latter is badly congested and its capacity cannot be greatly increased without increasing congestion or discommoding the public. With proper outlets in Manhattan, the Brooklyn system can carry many additional passengers without an increase in congestion or inconvenience.

The company's estimates indicate that ultimately there will be a surplus over and above all fixed charges, to be divided equally between the city and the company. Until this stage is reached, there will be no reward for efficiency and economical administration, and the contract will be subject to a certain ex-

tent to the same objections which have been urged against the Interborough contract; but the results are not likely to be so disastrous as in the case of the Interborough contract and should disappear when the period of divisible profits is reached and the company receives something in addition to its preferentials.

5. DEPRECIATION FOISTED UPON THE CITY.

As in the case of the Interborough this contract relieves the Brooklyn company from adequate provision for accrued depreciation and transfers the burden to the city. The Brooklyn contract merely requires that at certain dates the company shall provide certain amounts, as follows:

January 1, 1924.....	\$240,058
January 1, 1929.....	526,249
January 1, 1929.....	622,904
January 1, 1934.....	240,263
January 1, 1936.....	388,951
January 1, 1936.....	388,711
January 1, 1936.....	499,724
January 1, 1946.....	35,680
<hr/>	
Total	\$2,892,540
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The board of consulting engineers, who were asked to report to the Commission upon the amount of accrued depreciation, advised that it would amount to \$2,892,540 on January 1, 1914, on rolling stock alone without allowance for obsolescence or inadequacy. Now, it is evident that \$2,900,000 upon January 1, 1914, is entirely different from the same amount paid at distant dates varying from 1924 to 1946. As a matter of fact, the present value upon January 1, 1914, of the amount specified upon the basis of $4\frac{1}{2}$ per cent compound interest is less than \$1,400,000. Hence, the gift to the company, even upon the assumptions upon which the amounts in the contract are based, is about \$1,500,000.

The contract also excuses the Brooklyn company from making any provision whatever for depreciation upon the railway struc-

ture, transmission and distribution system, track and stationary equipment. The amount of this depreciation has not been computed, but it is a large sum and ought to be borne by the company out of reserve funds or its share of the profits in future years; but no such provision has been placed in the contract.

The direct effect of these provisions will be to increase greatly the amounts which must be set aside hereafter out of earnings to provide for depreciation which accrued prior to the beginning of the lease. Indeed, it is probable that the allowance for depreciation upon rolling stock must be made twice as much as it would be if the company were to start with an adequate depreciation fund in hand. The burden may be much heavier than anticipated, for the bases upon which the figures in the contract have been prepared are most favorable to the company. The life of the various classes of property has been assumed to be as follows:

Trailer cars, complete.....	40 years
Motor cars, not rebuilt, complete.....	30 years
Motor cars, rebuilt, bodies and trucks.....	35 years
Motor cars, rebuilt, equipment.....	30 years
Motor cars, converted, bodies and trucks.....	20 years
Motor cars, converted, equipment.....	30 years

Only one of these 928 cars is a modern all-steel car, and it is very improbable that any of the other cars will be in operation twenty years hence. Over six years ago the board of rapid transit railroad commissioners when considering the possible uses to be made of the short loop line between the bridges passed the following resolution:

“Resolved, That the character of the rolling stock which will be allowed in the portion of the subway route No. 9, connecting the Manhattan terminals of the Williamsburg and Brooklyn bridges, shall be at least as good as the most modern now operated on the elevated railroad tracks of the B. R. T.”

If this resolution were enforced to-day, and the Brooklyn company has had ample notice of it, over half of the cars could not

be operated through the subway and every train containing them would be excluded from the loop. If the subway operation is to be made as safe as possible, especially considering the steep grades on the Brooklyn system and the sharp curve into the Chambers street station from the Brooklyn bridge, all wooden cars should be excluded from the subways. But of none of the old-style cars is to be allowed in a subway and all of them are to be confined to lines which do not pass underground, a large portion of the present rolling stock will not be used at all.

The subways of the Brooklyn system are to be so built as to permit the operation of cars that are longer and wider than the cars now operated by the Brooklyn company. If the new cars are to be wider and equipped with facilities for quick loading and unloading, it would obviously be impracticable to operate the old-style cars over the same tracks. As a result, it will be necessary to restrict the old cars entirely to elevated use and to lines where the new cars are not to be operated. This may not last long, for the public may not be content with such operation and within a short time may demand that the old cars be entirely eliminated.

Yet the company will be receiving income on capital which has disappeared, for the city will allow the company \$3,500,000 in part representing a return upon useless capital, and it will also be obliged to allow the Brooklyn company 6 per cent upon the cost of new cars. These cars will be paid for out of new capital, although under every rule of sound accounting and railroading at least a part of the cost should be charged to a reserve fund accumulated out of past earnings. If the company has no such fund, having failed to make proper provision for the replacement of its property in past years, it should provide out of its share of the earnings for such portion of the depreciation as may have accrued in the years prior to the beginning of the lease. It was proposed at one time in the conferences that inasmuch as it might be difficult to estimate accurately the probable period of usefulness of the Brooklyn company's rolling stock, in view of its condition and age, the company should make provision out of its share of the earnings for the depreciation which has accrued prior to the beginning of the lease, and that the earnings of the system after the beginning of the lease should be charged only with the depre-

ciation accruing thereafter. This plan, which was eminently fair and which would have left these questions to be determined when and as they arise, and upon facts, not estimates, was rejected by the Brooklyn company, and this was made an excuse by the Interborough Company for its refusal to accept a similar plan.

6. DIFFICULTIES OF RECAPTION.

The retaking by the city of all or any part of the Brooklyn company's subway lines has been hedged about by many restrictions. The recaption provisions of the Brooklyn contract are open to many of the criticisms which have been urged against the Interborough contract. In one respect, however, the city's power of recaption will have even less force in connection with the Brooklyn system. The severance of the new subway lines from the elevated system would disrupt established routes of traffic and in many instances require passengers to pay two fares in order to reach conveniently their destinations. When the system has been in operation for ten years, it will be exceedingly difficult to separate the city's lines from the company's system, and whatever influence the power of recaption may have upon the action of a company generally will be reduced in this case because of the realization that the exercise of such power will be accompanied with such disadvantageous results that it will be exercised only with reluctance.

As in the case of the Interborough contract, an examination of the recaption provisions shows that, in view of the grouping for recaption and of the trackage rights that have been reserved to the Brooklyn company, the possibility of rearrangement in case of recaption and of utilizing all of the lines either by the city, the new operator, or the Brooklyn company, is considerably limited. For example, the recaption of the entire subway system of the Brooklyn company would require the construction of a new terminal at Coney Island to accommodate the Culver and New Utrecht avenue lines, and the construction of some sort of a terminal at East New York for the Fourteenth street-Eastern line, as the city does not retain any trackage rights or right of joint user in the company's proposed union terminal at Coney Island or over the existing or additional tracks which are to provide an

outlet from the Fourteenth street-Eastern line at and beyond East New York. Upon the other hand, the company's Coney Island terminal would no longer be used to its full capacity.

7. THE COMPANY'S FINANCIAL PLAN.

The financing of the company's investment involved excessive profits to the underwriters. The new bonds of the New York Municipal Railway Corporation are to be taken by the Brooklyn Rapid Transit Company at 97 per cent of par, in accordance with an agreement between the two companies dated October 1, 1912. The Brooklyn Rapid Transit Company has authorized an issue of six-year 5 per cent notes in the aggregate principal sum of \$60,000,000 and \$40,000,000 face value of these notes were sold as of October 1, 1912, upon a 6 per cent basis, less a commission of 1 per cent. The Municipal Railway Corporation, upon securing the approval of its financial plan by the Commission, will immediately issue to the Brooklyn Rapid Transit Company \$40,000,000 face value 5 per cent bonds dated July 1, 1912, with interest payable from October 1, 1912. In return for these bonds the Brooklyn Rapid Transit Company, out of the proceeds of the sale of its notes, will pay over to the Municipal Railway Corporation \$40,000,000 in cash, less 3 per cent discount (aggregating \$1,200,000), allowed to the Brooklyn company under the terms of the subway contract. By the agreement between the companies of October 1, 1912, the Brooklyn Rapid Transit Company also has the option to acquire all or any part of \$20,000,000 face value additional bonds of the Municipal Railway Corporation at any time within six years from the date of the agreement, such additional bonds to be paid for in the same manner and at the same rate as the original issue of \$40,000,000. By virtue of other provisions of the agreement, which need not be given in detail, the Municipal Railway Corporation is obliged to pay to the Brooklyn Rapid Transit Company amounts equivalent to an average of 6 per cent interest per annum during the six-year period covered by the notes and a commission of 1 per cent on the face value of the bonds delivered by the Municipal Railway Corporation, to issue its bonds to the Brooklyn Rapid Transit Company at 97 per cent of par, and to pay all other expenses connected with the

issuance of the notes and the bonds. The redemption price at which the company may retire any or all of the bonds prior to January 1, 1966, is 107½ per cent of par. The company is to establish a sinking fund which will amortize the bonds considerably in advance of the expiration of the lease.

It is evident that this scheme has all of the objectionable features that have been stated in connection with the Interborough's financial plan. The terms have been fixed by private agreement to which neither the city nor the Commission has been a party. The securities are to be issued at a very low price. No provision is made for public sale or any determination in the open market for the fair value of these securities. There is no limit to the discounts which may be paid in case of future issues to defray the cost of additions. The profits which the company will reap from excessive sinking funds are not justified and unfairly burden the city. The redemption price is too far in excess of the issue price. The profit in case of recaption is unwarranted.

8. INTEREST DURING CONSTRUCTION.

The contract permits the company to charge as part of the cost of the new lines and their equipment excessive interest during the period of construction. Reference has already been made to the plan whereby the company is to pay to the parent company 6 per cent for money during the first six years and also a commission of 1 per cent. The construction period will certainly be completed before these six have expired. As the contract provides that the company may charge against the system the interest paid by it or on its behalf, the interest rate during the construction period will be at least 6 per cent and, if the 1 per cent commission is added and extended over the six-year period, it will be nearly 6.17 per cent.

The contract also provides that interest shall be paid from October 1, 1912, nearly one-half year before the contract can be signed. It has been estimated that under this provision the Brooklyn company will be allowed to overcharge the cost of construction and equipment nearly \$2,000,000. The contract itself recognized an overcharge of \$1,330,000, which is to be gradually

amortized by the company out of its share of the divisible profits. As this point will not be reached for many years after the beginning of the contract, and as there is no provision made for the amortization of the entire overcharge, this part of the contract is a mere compromise which, in any event, places part of the burden upon the city and postpones for a long period any settlement whatever.

III. ELEVATED CERTIFICATES.

In addition to the two subway contracts, there are pending before us four elevated railroad certificates authorizing the construction of third and additional tracks on the existing elevated roads of Manhattan, the Bronx and Brooklyn, and certain extensions of the present lines. The elevated roads of Manhattan and the Bronx are to be operated independently of the subways, without general exchange of transfers, and under different rental and operating conditions. The Brooklyn elevated roads, as improved and extended, are to be operated until the expiration of the subway lease in connection with the subways of the Brooklyn system, with a single fare and upon the operating terms taken verbatim from the Brooklyn subway contract. After its termination, the rental and operating terms under the third-tracking and extensions certificates of the Brooklyn company will be readjusted along lines to be determined at the time. Certain objections to the pending certificates are common to all, certain others are peculiar to the two-thirds tracking certificates and still others apply only to the certificates to be issued to the Interborough Company and the Manhattan Railway Company. Those applicable to the operating terms of the Brooklyn lines have already been discussed in connection with the subway contract.

1. FRANCHISE PERIOD TOO LONG.

All of the elevated certificates run for eighty-five years, although the entire cost of plant and property thereunder is to be amortized within forty years, even including the premiums payable on the bonds of the companies if called before they are due. On general principles, franchises covering three generations ought not to be granted. None should be authorized beyond the life

of one generation, unless there are unusual conditions which make the case exceptional, for each generation ought to be allowed to determine its own policy towards public utilities. If a company is given a franchise period sufficiently long to permit it to earn a fair return upon its investment and to amortize any property reverting to the city at its termination, the company's interests have been sufficiently protected, and no franchise need run for a longer period. The pending certificates provide in each case for an allowance which will amortize the entire cost of the property in less than forty years, and yet the franchises will run on forty-five years longer.

It is urged that the city's right of recaption after ten years of operation offsets any objection to the excessively long term. But the additional tracks and extensions of the elevated roads probably could not be operated separately even if they were retaken by the city, and hence the right of recaption in this case is theoretical rather than real and assures no adequate control to the city.

2. AMORTIZATION CHARGE EXORBITANT.

The allowances for amortization give undeserved profits to the companies. The Brooklyn company is to have an allowance of 6 per cent to cover interest and sinking fund, is to run for the full period of the subway contract (forty-nine years), and the company is expressly required to amortize its entire investment under the elevated railroad certificates within that period. Inasmuch as the excess interest payable by the New York Municipal Railway Corporation to cover interest payments by the parent company in financing its notes will under these certificates be charged to cost of plant and property, and inasmuch as a discount of 3 per cent on par of the bonds issued by the Municipal Railway Corporation may also be charged to cost of plant and property, the Brooklyn company will have no excess discounts to make up out of the surplus in its sinking fund. Therefore, it will be in position to accumulate before the expiration of the subway lease a large surplus in addition to the amount required for the amortization of its bonds. Taking the company's estimate that the elevated extensions and third tracks will cost \$10,500,000, the surplus in forty-nine years will be more than \$7,000,000 over and above the

original cost, all accumulated from withdrawals from earnings ahead of any payments to the city.

At the expiration of the subway lease and at intervals thereafter, the operating and rental terms, under which the elevated certificates will be held during the remainder of the eighty-five-year period, will be readjusted, and account may then be taken in the terms for the following period of the fact that no further amortization of construction cost is necessary. But the company will have property upon which it has no fixed charges to pay from which it can secure a large income.

In case the city recaptures the third tracks and extensions subsequent to the expiration of the subway lease, it will have to pay large sums for the elevated structures, although their cost will have been completely amortized. For example, if the city desires to exercise this right at the time of the expiration of the subway lease, it will have to pay an amount equal to at least 52 per cent of original cost, although the whole cost has been amortized ahead of any payment to the city of interest and sinking fund charges on the city's large investment.

The situation is somewhat different in the case of the elevated certificates for Manhattan and the Bronx. The company is to set aside annually 1 per cent of the cost of plant and property for amortization purposes, and this deduction is to cease whenever the bonds issued by the Interborough Company to pay such cost shall have been fully amortized. As it is, the face value of the bonds, not the cost of plant and property, that is to be amortized, the entire discount of six and one-half points under the financial arrangement already described in the discussion of the Interborough subway contract will be taken care of before the amortization ceases. Even under this provision, the bonds should be amortized before the expiration of the subway lease, and the franchise will continue about forty years longer than necessary.

In case of recaption by the city at the expiration of the subway lease or at any time thereafter, the city will have to pay for the property which has been fully amortized on a basis as unfavorable as under the Brooklyn elevated certificates.

3. MUNICIPAL OPERATION FORBIDDEN.

It is expressly provided in both additional track certificates that in case of recaption the tracks and structures retaken shall not be operated by the city or by any other operator. Of course it would be impracticable for the city as a private company to operate separately the middle track on the elevated structure, and the prohibition against such use could not properly be criticised if it were limited to these additional tracks by themselves; but the contract is far broader and the prohibition against municipal operation would cover the case where the city had decided to condemn the elevated structures, eliminate the company operating at that time and either operate all of the lines itself or lease the road under advantageous terms to a private company. I have offered an amendment that the clause should be so limited on the ground that it is none of the company's business what the city may do with the property after it condemns it and that it is improper for this commission to limit or hamper the public authorities of the city and state for eighty-five years to come. The proposed amendment has been rejected, and it must be assumed, therefore, that the provisions in the certificate have some significance. If they do, they go further than is proper and undertake either to prevent or to hamper the city in case it should decide to terminate these certificates and acquired by condemnation the elevated railroads.

It may be urged that the provisions are without force on the ground that they cannot prevent the city from operating these railroads, provided it has the legal authority to do so, when the existing franchises and property have been properly condemned and these certificates terminated. But these certificates cannot be terminated except according to the provisions therein contained, and they clearly forbid operation by the city or its successors upon termination. If the city begins proceedings to terminate either certificate, the company may set up the defense that as the termination is for municipal ownership or lease to another company, the city has no such power, and consequently cannot terminate the certificate. If this contention is sustained, the only remedy will be to condemn the rights of the company under the certificates, the very thing which I assume they have been drafted to

avoid. If the city must condemn the existing rights of the company and the rights obtained under the certificates, it is obvious that the company will demand remuneration not only for the property but for the rights, and one of the things which will have to be eliminated will be this restriction upon the power of the city.

4. CAPITALIZATION OF REPLACEMENTS.

The certificates permit the capitalization of the entire cost of the reconstruction, strengthening and adaptation of the existing elevated lines including replacements. I have already called attention, in the discussion of the Brooklyn subway contract, to the provisions permitting the Brooklyn company to charge to capital account the cost of rebuilding its lines prior to the commencement of joint operation. This criticism applies to the Manhattan railway certificate, where the capital account is to be inflated by charging to it the cost of replacements which ought to be charged to operating expenses. The interest and sinking fund charges on this swollen account will be taken out of earnings in advance of the division of profits with the city, while at the same time the company will find the entire cost of this work fully amortized at the expiration of the grant. The cost of moving a track from one location to another, of substituting new steel work for old and of installing new ties, rails, etc., is necessarily an element of operating expense, whether incurred in consequence of wear and tear, or of obsolescence and inadequacy. It is so treated in the accounting systems of this commission and the Interstate Commerce Commission. The capitalization of replacements was strongly condemned in the Binghamton case by the Court of Appeals, which said (*People ex rel. Binghamton Light, Heat and Power Co. v. Stevens*, 203 N. Y. 7, 25):

"It will not be denied that fuel and such other materials as are consumed from day to day and the labor incurred in daily maintenance should be paid for from the earnings of the corporation as a part of its running expenses prior to the payment of interest upon bonds or dividends upon capital stock. A reasonable consideration of the interests of a corporation and the ultimate good of its stock and bond holders, and a regard for the investing public and that fair dealing which should be observed in all business

transactions, require that machines and tools paid for and charged to capital account, but which necessarily become obsolete or wholly worn out within a period of years after the same are purchased or installed, should be renewed or replaced by setting aside from time to time an adequate amount in the nature of a sinking fund or that by some other system of financing the corporation put upon the purchaser from the corporation the expense not alone of the daily maintenance of the plant but a just proportion of the expense of renewing and replacing that part of the plant which although not daily consumed must necessarily be practically consumed within a given time. If that is not done and renewals and replacements are continually added to the capital account, the capital account must necessarily become more and more out of proportion to the real value of the property of the corporation."

The practice is particularly bad in this instance for the cost of replacements is to bear interest and be amortized ahead of the city's own investment in the case of the Manhattan company. If it be argued that the companies have no funds from which to pay for these replacements, payment might have to be deferred, but under such circumstances, the cost should be subtracted from the companies' preferentials.

5. COMPENSATION FOR FRANCHISES.

The certificates for the enlarged Manhattan-Bronx elevated system do not provide for adequate compensation and are otherwise defective. The city is to grant very valuable franchises to private companies for eighty-five years. The only certain compensation is a meager 2 per cent upon the increase of receipts at express stations as compared with the receipts for the year ending June 30, 1911. In case the net profits exceed \$1,589,348 (\$1,547,351 in case a certain question as to taxation is decided against the company) and the company has received this amount every year from time the new lines are put in operation, one-half of the excess is to go to the city.

It is apparent that in general this is the same plan which has been followed in the subway contracts, viz., to give to the company a cumulative preferential based upon its reported earnings for the two years ending June 30, 1911. The grounds of criti-

cism are similar, although not so vital as in the case of the subways contract. The preferential does not represent the true earnings for the two years in question. Adequate provision was not made in these years for depreciation. No official estimate has been made of the accrued depreciation or of the increased amount which will be deducted in future years because of the failure to provide for accrued depreciation. Many replacements are to be capitalized, and the fixed charges—interest and sinking fund—upon this inflated capitalization will be charged against the earnings and deducted prior to any division of profits. If operating expenses increase, one-half of the amount will virtually be chargeable against the city even though the city is not at fault. If in any year the net profits fall below the preferential, the difference is to be cumulative with interest compounded semi-annually and deducted from earnings in future years before any division is made.

I have not attempted to discuss or enumerate all of the features of the contracts and certificates which might be criticised, such as the failure to include in cost the actual and necessary expenses for easements resulting from the Joralemon street decision, the omission of an agreement with the Brooklyn company as to real estate or easements upon its property or that of affiliated companies necessary for the construction of Brooklyn lines, separate recaption provisions for the different Queens lines, the defects in the default provisions, etc. It is to be expected that any contract of such magnitude and importance would contain minor provisions not entirely satisfactory to the city and the company, and if the objections to the pending contracts and certificates were merely of this character, I should not vote against their approval. But the features discussed herein are so essential and so numerous that they cannot be overlooked and they compel me to oppose a plan which I believe to be wrong in principle, dangerous as a precedent and wasteful of the financial resources of the city.

Mr. Moss.—I offer in evidence the letter of Mayor Gaynor to Hon. J. Edward Swanstrom, dated December 20, 1910.

(Letter follows) :

Dear Mr. Swanstrom:

In answer to your letter I shall briefly outline my views in respect of subways. As a contemporary of mine you know that I did not acquire these views since I became mayor, but that they are the growth of experience and study. For clearness let me subdivide what I have to say.

1. All subways now built or to be hereafter built under the statute are owned by the city from the start. That is the case whether the city furnishes all of the capital to build them, or only part of it, or none of it. On account of the limited credit of the city I have, therefore, been most anxious all along to have the subways built in part at least by private capital, so that they can be built at once, and simultaneously in all the boroughs, instead of being strung out during many years while city funds become slowly available. Some people seem to think that if private capital is furnished the city does not own the subway. Very few people seem to know that when the subway extension from Manhattan over into Brooklyn was built the city furnished only \$2,000,000 of the capital spent in the building thereof, while the company furnished \$8,000,000, and yet the city owns that subway just as much as though it put every dollar into it. This excellent bargain was obtained by Mayor Low.

CITY OWNS THE SUBWAY NOW.

In other words, we have reached full municipal ownership of our subway railroads. But we have not yet reached the period of municipal operation. We let the equipment and operation out to companies. The people of this city will not be prepared for municipal operation until they become sufficiently educated and honest themselves to elect competent and honest officials, and thus have honest government all the time. When we look about and see the dishonesty and graft which exist now, we cannot wish to add thereto by putting the operation of our railroads in official hands.

2. The city having the ownership of all subways, it seems plain that we should have only one system of subways, with a sin-

gle fare of 5 cents over the whole system, instead of being obliged to pay an additional fare to transfer from one system to another. Nevertheless, some are now advocating that we build what they call an "Independent" subway system, *i. e.*, independent of the present subway, and to be operated by another company. They want the city to build a rival subway system to the city's present subway which latter is capable of extension all over the great city, even to the borough of Richmond. In fact, such extensions were laid out by the old board of Rapid Transit Commissioners, with the purpose of having one complete system. And for what do these people want to abandon the original plan of one complete city system, conceived and settled upon advisedly by large and mature men, and have several independent and rival systems instead? Can you tell me, except to secure to the people of the city the privilege of paying an extra fare of 5 cents to transfer from one system to another? They admit, yes, that a system by which two or more fares are collected for one journey is not good, but say there is a reason why the people of this city want to have independent subway systems, and pay two or more fares. They say that the people want an independent system built in order to have it operated by a "good" company — a sort of Utopian company which will not look out for its own interest at all, but only for the interests and conveniences of all the rest of us.

WHERE IS THE "GOOD" COMPANY.

Well, now, where is the "good" company to be found? They have not thought that far ahead yet. Theory is one thing; practice another. Did anyone ever hear of, much less see, such a company as that? I think all public service companies look alike to you and me. We never saw a "good" one yet. But, more than this, when the "independent" system is built the city would have to put it up under the statute for bids for an operator, and who will guarantee that that "good" company, if it exist, will be the successful bidder? The chances are at least five to one that the present subway company would be the successful bidder. It would not bid in its own name, however, but in the name of another company organized by it for that purpose, so that the

two fares system' might not be interfered with, as might become the case if one company operated both systems. And if that imaginary "good" company should be the successful bidder, how long would it remain "good?" It would only be good by having "good" stockholders, who would elect "good" directors. But how long before the good stockholders would sell out their stock for a good price to bad ones, or to more ordinary mortals, who would elect the same kind of mortals for directors? Or how long before that good company would be in alliance with the bad company operating the other system? I will tire you if I attenuate the matter any further.

You do not dream dreams. Let me add that when it is considered that subway companies are under control of the Public Service Commission in respect of speed, headway, the number of trains, the length of trains, of all accommodations, the amount of stocks and bonds which they can issue, in fact, in every respect, it is difficult to see that the Public Service Commission could control several companies better than one.

NO SUCH THING AS A MONOPOLY.

It is plain that they could not but that their difficulties would be multiplied by the manner of operating companies. And when this public control is considered, coupled off with the ownership of the roads by the city, it is just as difficult to understand how the word monopoly has any place in the discussion at all. There is no such thing as monopoly, according to the meaning of that word, in respect of our city-owned and controlled subways.

3. You ask me to explain the different offers submitted by private capital to construct the subways to be owned by the city. Only one such offer has been submitted, namely, that of the operating company of the present city subway. There was another offer, but only to equip and operate and it has been withdrawn. The said offer of the present operating company is, in its main points, as follows: It obtained originally an operating contract for a term of fifty years, with a right to renewal term of twenty-five years, for the subway roads on this side of the East river, and for thirty-five years and a renewal of twenty-five years for the extension under the river and on the Brooklyn

side. It consents to reduce these long contract terms to a uniform term of forty-nine years. It offers to supply all of the necessary capital for construction over and above \$53,000,000 to be put in by the city. Its share would be about \$75,000,000. It also is to furnish all capital for equipment. It offers to complete and operate the Steinway tunnel to Queens borough and also to complete third tracks for express trains on the elevated roads in Manhattan and the Bronx at an expense of \$32,000,000. It proposes to share equally the profits with the city, *i. e.*, after paying interest and 1 per cent per annum for a sinking fund on the capital invested and cost of maintenance and operation.

WHAT THE INTERBOROUGH WOULD DO.

I suppose I need not trace the subway routes it offers to build. They were nearly all laid out by the old rapid transit board as a part of the great city system of which the present subway is only a part, and work may start on them without the usual preliminary delay. By extending north from Forty-second street to the Bronx, through Lexington avenue and south from Forty-second street to the East river, it will give two complete trunk lines through Manhattan and also two additional lines in the Bronx, more in the latter borough than the so-called tri-borough route would give. The said route down Seventh avenue goes by the new Pennsylvania station and under the river to Pineapple street, Brooklyn, then to Borough Hall, thence by Fulton street and Flatbush avenue to Prospect park and thence by the Eastern parkway to Buffalo avenue.

In Brooklyn it also offers to build the Lafayette avenue route, namely, from Flatbush avenue to Broadway. It thus offers to build in Brooklyn not only the part of the so-called tri-borough route that would be built at present in any case, but as much more. It also offers to operate the Fourth avenue route as a part of the system. It also offers to operate all future extensions built by the city, or on the assessment district plan, in the same way, including a tunnel from Fourth avenue under the Narrows over to Richmond borough.

It also agrees that at any time after ten years the city may take over these routes as prescribed by the subway statute. And

finally it offers to carry for one fare of five cents all over the system.

CITY'S CREDIT ENLARGED.

4. A word about the finances of the city in relation to subway building. When I swore in the new tax commissioners last January I suppose everyone has not forgotten that I charged them to enter upon the equalizing of values throughout the boroughs so as to get a larger assessed valuation, and I followed that matter up. I did this because I saw that the city would not build the subways immediately necessary unless we could increase its constitutional borrowing margin.

In this way I have secured for next year the unprecedented increase in realty values of \$600,000,000, thus securing a borrowing margin of \$60,000,000. The normal increase would have been only about \$300,000,000. And, strange to say, real estate speculators who were so loudly demanding subways are now finding fault with this increase in assessed values. They seem to be altogether ignorant of the city's financial case. The increase for the next four or five years will be only normal, *i. e.*, it will range from about \$220,000,000 next year up to about \$300,000,000 thereafter, giving annual margins of only from \$22,000,000 to \$30,000,000. The future borrowing margins, including the said \$60,000,000 for next year, have to be devoted chiefly to the city's ordinary needs, excluding subways. To emphasize this, I only need to give in round numbers the amounts of corporate stock issued in each of the last three years of ordinary city purposes, excluding water supply and subways, *viz.*, in 1910, \$35,000,000; in 1909, \$47,000,000, and in 1908, \$57,000,000. And another large issue of corporate stock is even now impending, as you are aware.

In addition to such issues of corporate stock for ordinary expenditure, the board of estimate and apportionment is under the mandate of a recent statute to issue corporate stock for \$30,000,000 of arrears of taxes to be added to the permanent debt of the city. In the face of these facts, how do you suppose I feel when people write me that I am opposed to subways and demanding that the city officials "at once appropriate" the \$15,000,000 which they say is necessary to build the so-called independent route? Patience

is the possession of great souls, the saying is, but I suppose it may have its just limits, like every virtue.

Sincerely yours,

W. J. GAYNOR,

Mayor.

Hon. J. Edward Swanstrom.

Senator Thompson.—Well, the Mayor didn't know much about this 8.76 per cent anyway.

It is a quarter to 6; that is, 5.45. We will suspend until to-morrow morning at 11. Mr. Moss will not be here to-morrow.

Adjournment.

JUNE 21, 1916.

MORNING SESSION.

WILLIAM MERICAN, after being duly sworn, testified as follows:

Examination by Mr. Schuster:

Q. You are president of the New York Newsdealers' Association? A. Yes.

Q. And have been for a long time? A. Some time.

Q. And will you tell us just what that association is? A. It is an association to protect the dealers from every encroachment.

Q. It comprises the newsdealers operating stands throughout Greater New York? A. Yes.

Q. And you are the official head of that organization at this time? A. Yes.

Q. Now, I believe you have a complaint or statement which you wish to make to the Committee in regard to certain matters affecting your association's interest in connection with the subways. A. When the subway was first built, the newsdealers were not allowed in the subway, but we went before the board of aldermen and the board of estimate and apportionment and we asked that newsstands be allowed in the subway, with the result that Borough President McAneny gave us permits to put stands one

foot wide and four feet long fifty feet from subway entrances. That means that we shouldn't interfere with Ward & Gow in any way.

Senator Thompson.—Who are Ward & Gow?

A. That is the corporation that is controlling the elevated and the stands in the subway. When their lease expired about two years ago, they wanted to renew it, but the lease was stopped. For the last three or four months instead of having those portable stands they have erected booths five by twenty-eight feet and some five by forty feet. They sell not only newspapers but candy, stationery, cigars, cigarettes and periodicals, and goodness knows where they are going to stop. What I want to know is who gave them the right.

By Mr. Schuster:

Q. Gave who the right? A. Ward & Gow.

Q. Who generally gives them the right to do those things? A. The Interborough are the only ones, but I don't see how it did in this case. In the beginning they sold newspapers and periodicals only, but now they are occupying more and more space. In my mind — of course I am not a lawyer — in my mind I believe that the subways are the highways as well as the surface outside. Now, when newsdealers on the surface are allowed stands one foot wide by four feet long, why are they permitted on the inside to have stands that are five feet wide and twenty-eight to forty feet long?

The average sidewalk is about twenty-five feet wide, while the average platform in the subway is about eighteen feet. When the sidewalk in New York is crowded and a man is pushed off in the gutter, there is no harm.

When some one goes to work and puts up a stand that actually occupies one-third of the width of the platform and people are pushed off in the subway, they go right down to the tracks, and such a case has happened.

I believe that the Fulton street station is one of the most crowded in the city. The width of the platform there is only eighteen feet, and there are two stands there, each eighteen feet long by five feet wide, and they are actually taking away from one-third of the platform.

Q. You measured those stands yourself? A. Yes, sir.

Q. And you know what the size of the stands was originally?
A. I don't, but I know what ours are — one by four.

Q. These news booths in the subway have been there since 1906 or 1907? A. No, sir, they are portable stands. Now, they vary, some longer, some shorter, but they are not uniform.

Q. What is the relative size between the portable stands and the ones you complain of? A. The portable stands were not as large and of course did not take up much space.

Q. They are built permanently? A. Permanently, yes, sir, but what I want to know is whether the Interborough had given them the right to add the additional merchandise that they are selling there.

Q. You haven't asked the Interborough? A. No. I would like the Investigating Committee here to find that out, because I believe that the Public Service Commission has some jurisdiction there, and we want to know whether the Public Service Commission gave them the right to do that.

Senator Thompson.— Do you have a newsstand?

A. I had one. I have a stationery store.

Q. Do the members of this association have newsstands both inside and outside? A. No.

Q. Ward & Gow operate everything on the premises but those along the street and those who get licenses from the city, and you don't have anything to do with Ward & Gow? A. No.

Q. But all of the stands that are along the elevated or the subway inside the premises of the railroad are operated by Ward & Gow? A. Yes.

Q. Well, how do they affect the stands that you people have?
A. It isn't a question of affecting them as it is a question of affecting the public.

Q. Is there any agreement as to what you should sell? A. We don't handle anything but newspapers and periodicals.

Q. Why. A. Because that is what the license is for.

Q. And each man has a separate stand? A. Yes.

Q. And Ward & Gow, do they have a right to say what periodicals or what magazines might be handled in those stands?

A. They have fifteen dollars a month for every periodical that is exhibited.

Q. Who do they charge that to? A. Fifteen dollars to the subway for the showing.

Q. Whether they sell one or not? A. Whether they sell one or not.

Q. Well, now, for instance, suppose I was publishing a magazine and offered them fifteen dollars and they didn't like the magazine, would they take it? A. No, they would not.

Q. How many stands in the city do they control? A. Well, as many as there are on the elevated and subway.

Q. So really Ward & Gow have a sort of censorship on what is published in these magazines? A. So far as they are concerned, yes, sir.

Q. If it had something in it about the Interborough for instance, the chances are they wouldn't allow it to be sold? A. They can do it if they please.

Mr. Klein.—That phase was gone into with the Public Service Commission and the question of a renewal of the contract was taken up. There wasn't any renewal granted, and it would have to be taken up with Artemas Ward to find out if they had the right to construct these stands and operate them by selling not only newspapers and magazines, but stationery and confectionery.

A. We would like to know who the constructors are and what connection they have with Ward & Gow.

Senator Thompson.—Of course, I understood some time ago that one of the officers of the Interborough wrote a story and it was to be published in a magazine. The story was written before we began to investigate or rather develop this investigation, so we waited for that magazine to be offered for sale, but it never was, and I wondered how they had the power to cut out the story after the magazine had gone to press. We never did get the story.

A. It would be a very interesting story.

Mr. Klein.—Do you think the booths are too big?

A. I will leave it to the Committee. I am telling you that in Fulton street the platform is only eighteen feet wide and they

occupy a quarter of it, and there is no guard, no fence, no chains, and that is one of the most crowded stations in the city. Why should the people be allowed more privileges than the people upstairs? The city is getting the benefit of the stands upstairs and they are not getting it from those downstairs, still they are allowed five times as much space as the people upstairs. The space is more limited upstairs.

Senator Thompson.—What do you mean by upstairs?

A. I mean the regular stands.

Mr. Schuster.—I understand Mr. Merican wants this Committee to investigate this matter.

Senator Thompson.—Suppose you send for Ward or Gow or somebody to see what there is about it.

Mr. Klein.—We have the Public Service Commission's records on the newsstand situation here.

Mr. Schuster.—Is there any final determination?

Mr. Klein.—No. There is no new contract. It is still hanging under the opinion of Commissioner Williams and the two claims of Artemas Ward, who is the assignee.

Senator Thompson.—Send over to the office for the contract.

While this is on, I am frank to say that I have had a lot of letters about company stores. The letters have been anonymous, but I have suspected that they came from people who kept stores and didn't like the competition. I understand the company stores sell at cost.

Mr. Schuster.—Yes.

Here is an opinion of abrogation made by the Interborough on the approval of the new contract.

Senator Thompson.—So they did act.

Mr. Schuster.—And Artemas Ward made a claim that he was entitled to a renewal.

Senator Thompson.—Suppose we send for Ward.

Mr. Schuster.—It is a question of postponing the final action until they begin operation on new contract. That is also discussed there.

Senator Thompson.—Now, this Contract No. 3, which provides I presume the same as Contract No. 4, that they shall have the privilege of selling newspapers at stations and railroads permits the contracting separately for these newsstands. Now, of course, when they get all finished with the constructing it goes into effect, but not until then. When that time comes, does it cover all of the newsstands?

A. All of them, both the existing newsstands and the ones on the subway now under construction.

Q. What about the elevated? A. That is not covered.

Q. So the elevated continues the same as they are now? A. There may be something in the certificates. I am not sure about that, but both Contracts No. 3 and No. 4 contain the same provision. We put that in by the advice of Mayor Gaynor.

Senator Thompson.—If they ever do get the new subway, then it will take effect?

A. Yes, and in the meantime they can do what they are doing.

Mr. Crummey.—Here is another provision in the contract, "Nor shall any trade or traffic other than the operation of the railroad be permitted in the stations thereof except ——

Senator Thompson.—That says that you shall not advertise on the premises, does it not?

A. That is in the new one.

Senator Thompson.—Do they cut out the advertising cards in the car? That is Ward & Gow.

Mr. Crummey.—No.

(Witness is dismissed.)

COL. WILLIAMS is recalled:

Senator Thompson.—We will take this matter up now. You came in with the negotiations for the dual subway contract early in 1911?

A. I think the date was March 2, 1911,

Q. And that was a proposal to the Public Service Commission? Is that a copy of the proposal? A. Yes.

Q. Now, did you hear from that before you sent your supplementary proposal on April 25th? A. We had several conferences.

Q. With the city representatives on the behalf of the board of estimate and apportionment and the Public Service Commission? A. Yes.

Q. With what officers? A. The members of the board of estimate and apportionment and Mr. McAneny, Mr. Cyrus Miller, Mr. Cromwell and somebody else, I have forgotten who.

Q. But it was a Brooklyn Rapid Transit committee? A. It was a special committee.

Q. Those were official conferences? A. The Public Service Commission usually or members of that Commission.

Q. After those conferences on April 25th, you submitted the supplementary proposal, Exhibit No. 2, of to-day? A. Yes.

Q. After that you must have received a communication from the Public Service Commission, or the special committee of the board of estimate and apportionment dated the 24th of June? A. I did.

Q. Have we a copy of that, of the communication to the Brooklyn Rapid Transit Company from George McAneny to Honorable William R. Willcox, secretary of the Public Service Commission? A. That is contained in the record of the board of estimate and apportionment of March 18, 1913.

Q. That communication is contained in the proceedings of the city of New York, June 29, 1911, directed to the Brooklyn Rapid Transit Company, June 21, 1911, printed in full of the record, and we will offer that record in evidence as Exhibit No. 3 of this date. On June 27, you replied to that communication? A. I did.

Q. And that is a copy of your reply? A. Yes, sir.

Q. On July 5, 1911, you made a supplemental reply, did you not? A. Yes, in answer to their letter of the 30th.

Q. They made a communication on the 30th, let's see what that is? Meeting of the board of estimate and apportionment held on June 30, 1911. Resolution was passed modifying to

some extent the proposition contained in their communication of June 21? A. No. Modifying the proposals embodied in the joint committee report of June 5.

Q. And that is contained in the record of the board of estimate and apportionment beginning 2863, which we will consider in that. On the 30th of June they addressed a communication, a copy of which you have in your file? A. Yes.

A. And you wrote a letter on July 5, 1911, and this is a copy? A. Yes.

Q. Is there any other record of the negotiations between the Brooklyn Rapid Transit Company or any of the subsidiary companies of which you are president, and the Public Service Commission or the board of estimate and apportionment between this date of July 5, 1911, and July 30, 1911, when the whole matter was passed upon? A. No.

Q. Those exhibits show exactly what the B. R. T. was willing to accept on June 30 when it passed on the Interborough proposition? A. Yes.

Q. Were negotiations taken up with the B. R. T., June 30, 1911, and did they accept the Interborough offer? A. They refused to accept it. After July 21 the board voted to give us the entire map of transit lines.

Q. That is contained in the record of July 21, 1911, and begins on page 3497 of the board of estimate and apportionment of that day? A. The resolution was requested by the board at the earliest date practicable with the form of contract which should be entered into, the lines of rapid transit as aforesaid. In order to expedite matters, taking the old tri-borough contract as a base, they attempted to modify that contract to suit new conditions and the new terms, by working days, nights and Sundays we were able to present to the Public Service Commission late in August or September our draft of such a contract. We went to work at it vigorously ourselves. We were afraid they would be slow in getting up a form of contract at that time of the year. It turned out that we were right in the supposition that they would be slow. The paper was wasted because no agreement was finally prepared until about a year and six months later. In the meantime we had some correspondence with them.

Q. Well, now, during all this time and practically all the year of 1911 negotiations were carried on with the B. R. T.? A. No negotiations were carried on after July 21, 1911, as the question of the phraseology of the contract came up, but even as to that we had no negotiations, because we did not know where their language differed from ours until a year later after the proposition had been reopened and the Interborough had come back in the arrangement.

Q. That was along about March, 1912? A. The final proposition was in February, 1912, and McAneny's report was in May, 1912, following.

Q. But during this time, as I say, the company, your system through which these negotiations were had was with the Municipal Rapid Transit Company. It was not organized until 1912? A. Until the fall.

Q. All the negotiations were with the Rapid Transit Company? A. Yes.

Q. Then I assume that from July 21, 1912, you had no further formal communications with the Public Service Commission or the board of estimate and apportionment until this communication of March 2, 1912? A. March 2, 1912.

Q. Offered in evidence, Exhibit No. 8. Then the next form April 26, 1912, and that is a copy of it? A. Yes.

Q. Offered in evidence as Exhibit No. 9 of this date. And that showed the situation so far as proposals or agreements with the B. R. T. before the board of estimate and apportionment were concerned, and they passed on the matter in May, 1912, at which time they adopted what was later a contract called the dual sub-way contract? A. That is a date of the joint committee. I think the board acted somewhat later than that.

Q. Let us get that date. A. May 24, 1912.

Q. That is the date? Proceedings of the board of estimate and apportionment for 1912. Well, I think that shows the situation except that all these matters were up to this time, May 24th, the proposed contract of the Brooklyn Railways Company was the Brooklyn Rapid Transit Company? A. In one sense, yes.

Q. In other words, if you had to get authority, the authority of the Brooklyn Rapid Transit Company would be the one you would get, not any of the other companies? A. We had the New York

Consolidated, the Sea Beach Air Line and the Canarsie Railways Company.

Q. Now, we would like a record of the minutes of the board of directors of that company so far as it relates to that subject up to this time. A. Those have all been furnished you. We had copies made for you last February or March.

Q. Now, during this time, Colonel, did you have meetings, formal meetings of the board of directors, and did you attend these formal conferences with the board of estimate and apportionment and with the Public Service Commission? A. None of the conferences were very formal. They were all extremely informal.

Q. Was a record kept? A. No stenographer was present, no secretary. Sometimes Mr. Whitney was present, but no record was kept.

Q. How many meetings did you have? A. I couldn't say.

Q. Where did you hold them? A. McAneny's office, McAneny's house, Mr. Willcox's apartments, Union League Club, once or twice at the Century Club, and a great variety of places.

Q. Metropolitan Club? A. We didn't have any of our conferences there. We may have once or twice, but the committee and some of the other people met there.

Q. Did they ever come over to Brooklyn to meet with you? A. I don't think we could ever get them over to Brooklyn.

Q. It was unfair to the clubs over there. A. Most of our conferences were held late in the afternoon or at night.

Q. Late at night? A. Sometimes all night.

Q. Well, now, who was present at those conferences? A. Part or most of the city conferees.

Q. Mr. McAneny? A. Mr. Cromwell, Mr. Miller, Mr. Eustice, Mr. Bassel part of the time, when he was in office, Mr. Maltbie, Mr. George B. S. Williams.

Q. Anybody else? A. There were subordinates of the Public Service Commission, of the comptroller's office, subordinates of McAneny's office.

Q. Was the comptroller present? A. I think he may have been on some occasions, but I do not recall any particular occasion, because he was not on the board of estimate and apportionment committee.

Q. Was the mayor present? A. I don't think so.

Q. Any representatives of banks? A. Yes, our executive committee was present at all times, and I think some of the conferees of our banker's counsel were present.

Q. Who was that? A. Mr. Rathbone for the Central Trust Company, Mr. Cravath and Mr. Whitney; Mr. Cotton, Kuhn, Loeb & Company, our own counsel.

Q. Was Mr. Morgan? A. No.

Q. Or any member of the Albany company? A. Mr. Morgan was present at one or two meetings with me in Mr. McAneny's office.

Q. Now, did you ever have any conferences with the comptroller? A. A couple of them at different times.

Q. Who was present? A. I don't recall.

Q. Who among your directors took an active part in this? A. Harding, Brady and Mr. G. W. Coapman.

Q. Were they present at these conferences you mention? A. Occasionally.

Q. Were they present at the comptroller's or the mayor's? A. I think not. I only had two talks with the mayor. One was before we presented the proposition, and I explained it to him in advance; the other was when I happened to meet him at the hearing when he asked how the thing was going.

Q. Was that before you wrote the letters? A. He was mayor part of the time.

Q. You wrote him some letters, didn't you? A. Not about this, I don't think.

Q. Those letters weren't written to the mayor? A. I guess they were.

Q. Do you know whether the gentlemen you mentioned had any conferences with the mayor when you were not present? A. I don't know that they had.

Q. Where did you have the conferences with the mayor? A. I don't remember specifically. I think in the comptroller's office.

Q. Of course you meet him informally? A. Occasionally, yes.

Q. Occasionally with the directors of the B. R. T. or the men you have mentioned? A. No.

HOWARD ABEL, auditor of the B. R. T., is called:

Mr. Schuster.—Honorable William R. Willcox, Chairman Public Service Commission, 154 Nassau Street, New York City, Honorable George McAneny, Chairman of the Board of Estimate and Apportionment, City Hall, New York City. (Exhibit No. 4.)

I assume that you have never procured that statement for me in connection with one of the transactions that I asked for?

A. I have the figures showing the proceeds. That is what you asked for.

Q. Have you that with you? A. Here it is. (Hands statement to Mr. Schuster.)

Q. The memorandum or statement which you have produced this morning, Mr. Abel, is a statement showing the result of sale of gold notes, six-year, 5 per cent notes sold by the Rapid Transit Company to the Central Trust, The Globe Company and others about October 1, 1912? A. Yes, sir.

Q. Under an agreement between the Brooklyn Rapid Transit Company and the banks named some time about July 1, 1912? A. I think so.

Q. And those notes were secured by the trust agreement? A. Yes, sir.

Q. In which the Central Trust Company was named as trustee? A. Yes, sir.

Q. I will read in this statement:

“Proceeds of sale of \$40,000, six-year, 5 per cent secured gold notes, at 94.023, principal placed to our credit, \$37,609,200, deposited in the following financial institutions:

Central Trust Company	\$14,290,950 00
Kuhn, Loeb & Company	14,290,950 00
Kidder, Peabody & Company.....	5,000,000 00
National Shawmut Bank	2,716,380 00
Boston Safe Deposit & Trust Company.....	452,730 00
Merchants' National Bank	452,730 00
Old Colony Trust Company.....	905,460 00

Total	\$28,109,200 00
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Proceeds of sale of \$20,000,000, six-year, 5 per cent secured gold notes at 96.465; principal placed to our credit, \$19,299,000; accrued interest July 1 to October 8, 1915, \$269,444.44; deposited to increase proceeds to 97 per cent of par value \$101,000; total, \$19,669,444.44, deposited in the following financial institutions:

Central Trust Company	\$7,376,041 66
Kuhn, Loeb & Company.....	7,376,041 66
Kidder, Peabody & Company.....	917,361 12
National Shawmut Bank	1,500,000 00
Boston Safe Deposit & Trust Company.....	150,000 00
Mechanics' & Metals National Bank.....	750,000 00
Old Colony Trust Company.....	500,000 00
Mechanics' & Metals National Bank.....	750,000 00
Second National Bank of Boston.....	375,000 00
Total	<u>\$19,669,444 44 "</u>

In this statement, Mr. Abel, I notice on the account of the proceeds of the sale of the last \$20,000,000 that the Brooklyn Rapid Transit Company was required to deposit to bring the proceeds up to 97 per cent of par value required by the contracts taken of \$101,000. Why was not a similar sum required in connection with the sale of the \$40,000. of bonds? A. Well, in the case of the first transaction, the notes were sold October 1, 1912, and the bonds which were to be purchased by the Brooklyn Rapid Transit were not sold until the following spring in the \$20,000,000. I think the bonds were sold shortly after the date of sale of the notes. I believe the actual date was November 4, twenty-six days after this transaction was consummated.

Q. You mean the \$20,000,000 transaction? A. There was the same obligation in each instance, but the period that intervened between October 1, 1912, and March or April following when the bonds were sold, permitted of an increase of interest on the net proceeds which was used in part to pay the January 1 coupon account. When the bonds were sold some time in the spring—I think in April—the Brooklyn Rapid Transit Company did borrow an additional sum and deposited that amount. This statement

was in answer to your request to show the transactions that took place and where the proceeds were deposited.

Q. Well, now, at the time of the sale of the \$20,000,000 of bonds were you operating under a definite contract executed and delivered between the New York Municipal Corporation and the city, known as contract No. 4, were you not? A. Yes.

Q. And that contract specifically provided that there should be no discounts in excess of 3 per cent of the par value did it not? A. It did.

Q. Those \$20,000,000 of bonds were sold under precisely the same agreement with the banker as the \$40,000,000, were they not? A. These are not bonds, they are notes. They have no connection with the contract with the city relating to discount.

Q. No, that don't answer my question. The contract for the sale and purchase of the notes between the Brooklyn Rapid Transit and its bankers provided for the purchase by the bankers of these \$20,000,000 of notes that were bought in October, 1915, as well as the \$40,000,000 that were acquired in July or October 1, 1912? A. Yes, and on the same basis.

Q. And on precisely the same basis? A. Yes.

Q. Now why was it deemed necessary to increase the proceeds of the sale of those bonds so as to equal 97 per cent of the par value in the last purchase when it was not done in the purchase of the \$40,000,000? A. It was done.

Q. Do you mean to say that these proceeds represent 97 per cent of the face of the notes that were purchased on October 1, 1912? A. No.

Q. You were under no obligation in 1915 when you sold the \$20,000,000 to make up the deficit between ninety-six and a fraction and ninety-seven than you were in October, 1912, to make up the difference between ninety-seven and ninety-four and a fraction? A. There is no difference in the two transactions. The only difference was that in 1915 when the \$20,000,000 notes were sold and placed on deposit, the difference of \$101,000 was used to make the purchase price of the \$20,000,000 bonds which were to be issued. I don't remember what occasioned the delay from October 8th to November 4th when the actual transaction took place, but that was the object of that deposit and was in pur-

suance of the contract provision. Similar transactions occurred in either April or May, I don't recall which it was, in 1913 when the \$40,000,000 of New York Municipal bonds were sold at ninety-seven. The trustee required that we deposit some money in order to take up the bonds when they were issued, and I don't know that he had any right to require it before he parted with the bonds, but he did have the right when he authenticated the issue of \$40,000,000 bonds.

Senator Thompson.— Recess until 2:30.

AFTERNOON SESSION.

Mr. Schuster.— Mr. Abel, there was a deduction from the par value of the bonds sold on October, 1915, on the basis of 1 per cent for the term of the notes the same as when the \$40,000,000 was required.

A. Yes, sir.

Q. That would be for a period from October 8, 1915, to the end of the notes I take it? A. The 1 per cent has nothing whatever to do with the life of the note. It is a flat deduction of 1 per cent.

Q. One per cent on the whole term? A. On the par value of the bonds, not the whole term.

Q. Can you state from any figures you have before you just what the amount of that alleged prepayment or discount was on the \$200,000,000 deducted by the bankers on October 8, 1915? A. My recollection is that it was \$501,000.

Q. I wasn't referring to that 1 per cent commission in my question but to the amount of the prepaid interest in the prior determination on the \$20,000,000. There was a like prepayment deducted on the \$40,000,000 wasn't there? A. Yes, sir.

Q. And have you figures that show just what the amount of that was on the \$20,000,000? A. That is \$501,000.

Q. Has that amount been determined and allowed the New York Municipal by the Public Service Commission? A. Not yet.

Q. Has it been submitted for allowance? A. Yes, and the form of vouchers has been exhibited, but the question has not been

passed upon as yet, because the determinations have not been issued for the period covered by that payment.

Q. But so far as the company is concerned it has exhibited proof? A. Yes, sir.

Q. You were properly entitled to it in the prior determination and will be entitled to it on the same grounds in some subsequent determination? A. We expect to have it included.

Q. What I mean is that there is no different basis for that allowance than in the prior determination, that aggregates \$501,000, I believe you say? A. You asked me this morning as to why the B. R. T. contributed that money to make up the 97 per cent of the face of the bonds and why a similar amount was not shown by the 1912 transaction. I explained that the proceeds of the notes in 1913, when the bonds were sold, required the Brooklyn Rapid Transit Company to deposit an additional amount to make up the 97 per cent of the bonds.

Q. That was advanced by the New York Municipal for the Brooklyn — A. The Brooklyn Rapid Transit Company.

Q. And that was charged by the Brooklyn Rapid Transit Company against the New York Municipal, which would doubtless appear on your books as an asset, an advancement to your affiliated companies? A. Yes, sir.

Q. I offer in evidence, Mr. Chairman, the statement of the proceeds of sale and deposits of such proceeds of the various banking companies exhibited by Mr. Abel and explained in his testimony.

Mr. Abel, your company has furnished to the Committee all data prepared from your records by the public accountants. Have you copies of those records with you? A. I don't have copies of all the data, but I may have what you want.

Q. Have you the balance sheets of 1914-1915? A. What company?

Q. Of the Brooklyn Rapid Transit Company. We will take that one first. A. Yes.

Q. I take it that this is a copy of the same? A. Yes, sir.

Q. I offer in evidence the general balance sheets of the Brooklyn Rapid Transit Company for the fiscal years 1914-1915, inclusive, showing the capital account, assets and liabilities covering

those fiscal years. These statements are as of June 30th in each year, are they not? A. Yes, sir.

Q. And this first statement shows the complete asset condition of the Brooklyn Rapid Transit for each of the several years on the fiscal date of June 30th of each year; also the liability condition of the company? A. Yes, sir.

Q. The Brooklyn Rapid Transit is a business corporation and is not bound to keep accounts in the uniform system provided by the Public Service Commission? A. I think that is true.

Q. But the Brooklyn Rapid Transit Company as such is a majority holder and in some instances the holder of the capital stock of public service corporations that are rendering statements and are subject to the Public Service Commission in the first district? A. There are other companies that we have nothing to do with that are rendering statements.

Q. Briefly, then, the Brooklyn Rapid Transit Company is the holding company of the operating companies of the Brooklyn territory subject to the Public Service Commission in the first district? A. Well, that would not be quite so.

Q. What is its relation? A. The Brooklyn Rapid Transit Company is the holder of the constituent companies in the B. R. T. system.

Q. Were the charts that were introduced in evidence the other day prepared by your officials or your accounting department? A. Your question brings in again the lease lines in which the Brooklyn Rapid Transit Company might not have any ownership.

Q. Does the Brooklyn Rapid Transit Company as the holding company operate the physical properties of the companies? A. The Brooklyn Rapid Transit Company does not operate any.

Q. It is largely a security holding company? A. That is true.

Q. And when in your statements here you speak of "affiliated company" you mean the corporations whose stocks are held by the Brooklyn Rapid Transit Company or controlled by that system? A. Yes.

Q. Now, your second item, "Accounts with Affiliated Companies," will you explain to us what is the nature of those accounts? A. They might be open accounts as distinguished from

interest, and dividends receivable as distinguished from company advances.

Q. What I am trying to get at is that I would like to have some understanding of the meaning of the distribution items such as "Accounts with Affiliated Companies." A. If the Brooklyn Rapid Transit Company, as it did in 1913, advance any money in behalf of the New York Municipal it was liable under a contract, and it might carry that as a charge on its books against the New York Municipal, grouping those accounts in the trial balance. If that was condensed it would come under that characterization.

Q. Then, "Accounts with Affiliated Companies" might be an open account on the books of the Brooklyn Rapid Transit Company? A. It might be represented on the books and also be a contract obligation.

Q. Have you any detailed analysis of the "Accounts with Affiliated Companies" for any of these years? A. I have for 1907, which will give you an idea.

Q. You have nothing of a later date? Our figures start with 1909. A. Well, this is a copy of a trial balance that has been furnished you.

Q. I haven't seen that. I asked for it, but didn't see it. Perhaps it will be just as useful as anything else. A. It would be just as easy to give you 1909, but we have given you what you asked for.

Q. That was an error in the subpoena.

Senator Thompson.—What is that?

Mr. Schuster.—Asking for 1907.

I don't find that you had that classification in 1907. However, you do have a classification here that will be all right. It runs throughout the entire period. You will find a little farther down in the statement, "Equity in Brooklyn City Road Construction." That item of \$5,380,486.79 seems to have been carried on the books of the company as early as 1907, and is still carried at the same amount on June 30, 1915.

A. If you would call for the balance sheet of 1896 you would probably find the same item. That equity in road construction is

money advanced in connection with the Brooklyn Railways Company in the electrification of the road in 1896, probably.

Q. You speak of it as an equity to the title of the property?
A. It is an equity in that construction account.

Q. Are there some interests other than the Brooklyn Rapid Transit Company in it? A. Brooklyn Heights as it came under the lease and the amount is recoverable from the Brooklyn city line.

Q. Does the Brooklyn Rapid Transit hold any security for the reimbursement of the funds from the Brooklyn Heights or the Brooklyn City Railroad? A. Well, I wouldn't call it that exactly. The Brooklyn Rapid Transit Company is entitled to all the profits of the Brooklyn Heights resulting from the operation of the Brooklyn city lease under a title it got through some foreclosure proceedings in the early '90's.

Q. Well, is this an interest-bearing obligation that you hold?
A. Yes.

Q. And that interest is paid periodically by the Brooklyn Heights? A. Semi-annually.

Q. At what rate? A. Six per cent.

Q. By the Brooklyn Heights? A. Yes, sir.

Q. And does the Brooklyn Heights Railroad Company receive interest on the same amount from the same Brooklyn City Railroad? A. No, sir. It pays fixed rentals according to the terms of the lease.

Q. That lease is perpetual? A. Substantially perpetual.

Q. The Brooklyn Heights Railroad Company is an operating company under this lease? A. Yes.

Q. And its relation in so far as this asset is concerned of the Brooklyn Rapid Transit Company is simply of lender to the Brooklyn Heights? A. Yes, sir.

Q. Does the Brooklyn Rapid Transit Company hold any written evidence of its debt outside of the book accounts? A. I think so, yes, sir.

Q. Is there any contract in relation to that? A. I think there is a contract covering all of the relations of the Brooklyn Rapid Transit Company's advancements of money.

Q. Well, now, is there any provision being made or has any been made for the fulfilment of that obligation by the Brooklyn

Heights Railroad? A. That takes care of itself automatically. In case of the termination of the lease of the Brooklyn City Railroad, the Brooklyn City Railroad would have to pay the Brooklyn Heights Railroad the advancement made in its behalf, and when that was done the Brooklyn Heights would recognize the Brooklyn City claim.

Q. That amount has remained the same throughout all the years? A. So far as the Brooklyn Heights Railroad is concerned it did not. The Brooklyn Heights has advanced probably five million more.

Q. Well, has the Brooklyn Rapid Transit Company any priority over the Brooklyn Heights to protect this asset investment? A. I don't know that it has any priority, but in the event of the termination of the city lease, they would come under the Brooklyn Rapid Transit Company.

Q. Is this note treated as a bond? A. It is treated as bills receivable.

MR. ARTEMAS WARD, after being duly sworn, testifies as follows:

Senator Thompson.—Where do you reside?

A. New York City, 6 East Seventy-eighth street.

Q. And you are a partner in the firm known as Ward & Gow?

A. I am the only partner. Ward & Gow is a trade name.

Q. How do you get the name "Gow?" A. Originally there was a firm by that name.

Q. Did Mr. Gow die or something? A. No.

Senator Lawson.—He bought him out. There was some trouble with a bank over in Brooklyn and his partner failed to adjust it, so he left the company.

By Senator Thompson:

Q. Mr. Gow went into bankruptcy and you bought him out?

A. He went into trouble.

Q. Now, you made a contract with the Interborough Rapid Transit Company on the 1st day of January, 1906? A. Yes.

Senator Lawson.—Was that by competitive bidding, Mr. Ward?

A. Not public bidding.

Senator Thompson.—Private bidding?

A. Yes.

Q. What do you mean by that? A. I offered a bid but it was not taken up so I entered into the contract.

Q. You competed with yourself? A. Partly.

Q. You raised your own bid? A. Sometimes.

Q. When you got it up high enough, they made a contract with you? A. Yes.

Q. And that was this contract of January 1, 1906, before the Public Service Commission? A. Yes.

Q. Now, as I understand that contract it covered the sale and exclusive privilege to sell, keep and offer for sale on newsstands and stations, approaches to stations and platforms owned or leased newspapers, periodicals, magazines, confectionery and all articles really sold in stationery stores, but not including cigars, tobacco, fruit or nuts. A. Yes.

Q. Also the right to receive and check parcels? A. Yes.

Q. Also the right to place automatic vending machines for the sale of chewing gum and candy? A. Yes.

Q. And those are all exclusive rights to maintain advertisements and notices on cars and platforms wherever you could? A. Yes.

Q. And the privilege of transporting your newspapers free to the trains? A. Yes.

Q. For that you paid four hundred twenty-five thousand for the first year and four hundred fifty thousand for each subsequent year, and the term was eight years from January 1, 1906.

Senator Lawson.—That is substantially the same contract that they have now.

Q. Now, you had an option that read something like this: "Ward & Gow are to have an option for the term of five years by the payment of 10 per cent, additional rental after the expiration of the said renewal." A. That was five years after the whole term.

Q. Then the condition is that you pay 10 per cent after the second year of the renewal? That would be after the year 1916? A. Yes. It don't begin until after next year.

Q. The complaint has been made here this morning by Mr. Merican that you are getting privileges at the expense of the newsstands at the entrances to the subway stations. In other words, they are giving you more space than they can get on the street. That the city authorities in control of the streets limit the size of their stands and the subway people are permitting you to extend the size of your stands at the expense of the proper operation of the road, and that you have more display space, so that you get an advantage? A. The space allowed us for our stands is materially less than what we have received during the last ten years. Where we had seven feet, we have now only five, which means that we have given up two feet to the public.

Q. Right now they are in the process of enlarging some of your newsstands, are they not? A. There may be some wooden stands, but I am not aware of any. I believe they occupy less space in every instance. This is certainly true of the steel stands, which are more noticeable.

Q. Now, then, you made a new contract in December, 1913, and this is a copy of it? I will show you. (Hands copy to Mr. Ward.) A. Yes.

Q. That runs for fifteen years from the first of January following? A. Yes.

Q. How does it differ from the old contract? A. It differs very materially, as the rent is almost doubled.

Q. You think that is material? A. I think it is material.

Q. Is that the only change? A. Practically.

Q. The privileges are the same? A. Yes.

Q. This covers the present railroads together with the extensions made under the new contract, does it not? A. It covers it, but is not included in it. It simply states existing railroads and those contracted for. The other roads are separate.

Q. So that this contract covers existing railroads for fifteen years from the first of January, 1914? A. In so far as the cars are concerned.

Q. Do you regard this contract as now in force? A. I do. It was presented to the Public Service Commission.

Q. Were you present? A. My attorneys attended to that.

Q. Your attorneys? A. Yes, I don't know what they are doing. All of that record is in the Public Service Commission. They decided it.

Q. They decided it? A. Yes, they decided it.

Q. And they did not approve this contract? Did you know that? A. I did not.

Q. You regard the contract in force just the same without their approval? A. Yes.

Q. What does it cover, Mr. Ward? A. The privileges therein stated.

Q. On all the railroads? A. I said not on all the railroads.

Q. Describe the railroads. A. The existing railroads.

Q. But describe them.

Senator Lawson.— Senator Thompson is from up State and he wants to know the names of the local roads.

Q. The present subway and the existing systems? A. As it now stands.

Q. Elevated and subways? A. Yes.

Q. Your idea is that the contract is valid and will continue in force for those fifteen years as to all the newsstands on the existing subway and the existing elevated notwithstanding the provisions of contract No. 3. Are you familiar with the provisions of what we call contract No. 3? It is a contract between the Interborough and the city to build additional subways up Seventh avenue, up Lexington avenue. A. I know it substantially.

Q. You know about that? A. I do.

Q. You know individual bids can be made and let on stands? A. I think I do.

Q. You think this contract is in force for fifteen years from the first of January, 1914, and you couldn't let individual stands under that provision in the contract on the present subway? A. I think so.

Q. You think that is true? A. Yes.

Q. How many newsstands are there on the present subway? A. We have 120 stands.

Q. Your stands are the ones that you get to after you pay a nickel to get on the train? A. Yes, and we made the large profit of \$1 a stand last year.

Q. Of course you can brag about it if you want to. A. It is hardly enough for the Commission to fight over.

Q. Then since this contract was made in December, 1913, you have been paying the new rental? A. Yes.

Q. That is the double rental? A. Yes.

Q. You say you didn't know this contract was submitted to the Public Service Commission? A. I said I might have known it at the time. I have forgotten.

Q. Can you give me any reason why they submitted it to the Public Service Commission? A. I don't know. As I said, my attorneys always attend to that.

Q. Well, do they do as you tell them, or do you do as they tell you? A. They generally do what they think best.

Q. It looks as though you were present at one of these meetings, February 16, 1914; or at least the Public Service Commission assumes that you were present. A. I believe there was one meeting at which I was present.

Q. That was the one where they had all of the discussion? A. Unless it was discussion in regard to the theory.

Q. There was one-half inch of discussion on that day, and it gives your name here as being present. Do you remember the meeting? A. It was a long time ago.

Q. And you were there all of the time? A. I didn't go there to speak or take part, merely to hear. I went out of curiosity.

Q. Do you hire lawyers out of curiosity? If you do, I am going to come down here to practice law. A. They went for something else.

Q. You must have arranged to have them go? A. Well, I suppose I did when I employed them.

Q. Why did you take it up with the Public Service Commission? A. I didn't. The road and my lawyers did.

Q. You think this just as valid as if the Commission had approved it? A. Just the same, yes.

Q. The hearing was asked for on February 2d by Mr. T. P. Shonts. Do you know Mr. Shonts? A. Yes.

Q. You knew him? A. How did you know I knew him?

Q. He asked for the hearing on February 2, 1914, and the hearing was the 5th. Did you ever have any conversation with

President Shonts or any other Interborough officer as to whether your present contract is legal, in view of the Public Service Commission's disapproval? A. I had no such conversation.

Q. Do they accept your rents? A. They do.

Q. Well, then, they must think it is a good lease if they accept the rents on it? A. Yes.

Q. So that you have then the exclusive right to vending machines, periodicals, magazines, confectionery, advertising in cars, advertising in stations, and you have the exclusive right to the present subway and the present elevated lines for thirteen years from next January? A. Twelve years.

Q. Also weighing machines? A. Yes.

Q. Well, now, what about your right to station privileges, to space in the stations, etc.? A. On the existing lines. That was settled at the beginning of the contract by the setting aside of sufficient space.

Q. You have no rights on the new railroads, that is the extensions? A. Not unless they are allowed to the Interborough.

Senator Lawson.—You consider the contract under which you are now operating as the one which was submitted for approval?

Senator Thompson.—It is the same one.

Q. Have you the right under this contract to the elevated roads that have been third-tracking on the Manhattan lines? A. I understand they are part of existing lines.

Q. And you have the right on the express stations as well as the local stations under this contract? A. Yes.

Q. Are you familiar with the provisions of the certificate that was given to the Manhattan railway on March 19, 1913. It is the one given in regard to Webster avenue line. A. That is in regard to the new lease.

Q. Then you are familiar with it? A. Yes, with the provision about the Webster avenue, but I am not so familiar with the contract in regard to the new lines.

Q. That is left out of the Manhattan? A. The Manhattan, the Webster avenue, existing lines and future lines?

Q. And they had to have a certificate on March 13, 1913? A. I have no knowledge.

Q. Now, you say you are under the contract all alone? A. Yes.

Q. And hasn't anyone an investment in it except you? A. Nobody.

Q. Who puts up your stands? Your place of business? A. Hired men, I don't know who.

Q. Do you pay them? A. I pay for the erection.

Senator Lawson.—The railroad company doesn't have anything to do with it?

A. No.

Q. Do you have blueprints and specifications as to where they will be? A. No.

Q. Who handles that for the railroad? A. The engineers.

Q. Which one? A. I don't know.

Q. You don't come in contact with him? A. I don't.

Q. Does this contract, Mr. Ward, give you the exclusive right to say how you shall display and handle the newspapers, periodicals and magazines on these stands? A. No.

Q. It doesn't? A. It doesn't say how I shall do it, no.

Q. And it gives you the exclusive right to say whether or not a newspaper or periodical shall be handled at all doesn't it? A. Certainly.

Q. You could, under that contract, arbitrarily refuse to handle certain papers, etc.? A. Just as though I rented a Sixth avenue store.

Q. You have that arbitrary right? A. The ordinary business right.

Q. You can refuse without giving any reason to handle periodicals, magazines on any of these one hundred twenty stands? As any business man could.

Q. Is it a Public Service proposition? A. There are eighteen thousand daily papers in the United States and twenty-five thousand periodicals.

Q. I know there are all of these things, but you don't report to the Public Service Commission? A. I rent from the Interborough railroad.

Q. The Interborough receives about \$900,000 a year for newsstand privileges? A. Yes, and we receive \$15 a month on both the subway and elevated.

Q. Well, now, have you ever exercised the right to refuse the sale of a periodical or newspaper? A. I have.

Q. Because of some article contained therein? A. I have refused the sale of several newspapers because they were insulting to the average religion of the city. z

Q. And you were the judge as to whether or not they should be sold? A. It was in the interest of my own business.

Q. If they were insulting, they would be libelous of course. A. Not necessarily.

Q. Did you feel that you had a good piece of property when you got this contract? A. I lost money on the proposition the first year, but there are other years coming and I consider it a good contract.

Q. And you feel friendly toward them for giving you the contract? A. There is no friendship about it.

Q. Well, suppose I want to write an article in some periodical and be a little critical or a good deal critical of Mr. Shonts, would you feel like refusing to sell that periodical in your newsstand? A. Hardly.

Q. You would have the right? A. I would have the right.

Q. You control so many publications that that is a very serious proposition in New York City, isn't it? A. No. Very few transgress along any such lines.

Q. But if they did that is what I am getting at, the chance is that they would lose the display on your newsstand? A. I don't know.

Senator Lawson.—I figure that the display has a certain amount of advertising value.

A. It has.

Q. Must be a serious situation if it cannot be displayed on your stand. A. If they are decent they are and if they are not decent, we don't display them.

Q. You charge each publication so much per month for being displayed on your newsstand? Without paying that sum they can't go on? A. Yes.

Senator Thompson.—Of course you are all right if you say decency as you have an arbitrary right which you can use. You could use that, Mr. Ward, politically if you want to, in a business way if you want to.

A. Politically, yes we can say it of the Republican party or the Democratic party, but you cannot say it about individuals.

Q. You can if you want to, can't you? A. It is possible.

Q. And that has an effect on the way the editor gets up his magazine to start with? A. It is too far off to be considered. Let me say again that I want decency because it helps my sales. If a man puts in something about a Hebrew, Catholic or Protestant, I will not put it in.

Q. All right. A. There are just such things offered. I won't sell publications that are insulting to Catholics. I won't put them on my stands.

Q. When you get through here, go over and talk to the mayor. A. I might have some influence with him.

Q. Now, you sell the newspapers at an increase in price, and that is where you make your money? A. We don't make any money there.

Q. I understand you charge them—you are a financier? A. A little one.

Q. You do just like the banks you charge them getting ready? A. That is right.

Q. And how much do you charge them? A. As I said, \$15 a month.

Q. Thirty dollars for the subway and elevated together. I think it rests in the record, and we will refer to it in this case, Record Case No. 6634, Movement No. 2, R. T.

Senator Lawson.—Now, Mr. Ward, you say you recognize this contract, and the Interborough recognizes it, but the Public Service Commission fails to approve it?

A. Yes.

Q. That is the way the matter stands now? A. Yes.

Q. And you don't contemplate any further step in regard to your rights in the matter? You consider that the contract is good and valid, and you will operate under it no matter what attitude

the Public Service Commission takes? A. I don't think they will make any changes.

Q. Have you any opinion as to why a provision of that kind should be placed in the contract and not be recognized by parties to the contract? A. The provision is placed in the contract and the Public Service Commission shall have supervision over this.

Mr. Crummey.—Under which Mr. Ward received his original lease. The provisions are found under contract No. 3 and Mr. Ward got his lease under contract No. 1. The Public Service Commission has no jurisdiction between Mr. Ward and the Interborough's operation under contract No. 3.

Senator Lawson.—The rental goes to the Interborough?

A. Yes.

(Mr. Ward is dismissed.)

Senator Thompson.—Mr. Ward says that the railroad and he understand that the contract is perfectly valid in all of its terms, notwithstanding the refusal of the Public Service Commission to approve it, and that he is paying the rents, and that you are receiving the rents under the contract, and that it is good for fifteen years from January 1, 1914, and covers all of the present subway and present elevated and third-tracking stations.

Mr. Quackenbush.—I prefer not to specify an agreement or disagreement. Let me say in explanation of my hesitancy about it that we have a potential litigation with Mr. Ward over this question. It involves very large sums of money. We contend on our part that we had no right to renew this contract upon its expiration.

Senator Thompson.—The Committee is only interested to know if the Interborough, under its dual subway contract with the city, would share its proceeds from the newsstands with the city, or whether the Interborough was to get everything?

Mr. Quackenbush.—The matter has not yet been finally decided. We have entered into a stipulation which will be held in abeyance, and I feel, in justice to my clients, that I should not in an off-hand way make any statements about this matter.

Senator Thompson.—Here is supposed to be a legal contract made in reference to these present subways which Mr. Prendergast, your city comptroller, has told us were to be pooled with the city.

Mr. Quackenbush.—There is no pooling yet.

Senator Thompson.—There will be some pooling if you get the new one. If the city has any right to the rentals they will have to approve the lease?

A. I prefer not to give any views about it.

Q. I don't want you to give them now. A. It involves over a million dollars. We have a three-cornered litigation, which involves very large sums. Mr. Ward and the city and the Interborough are all interested. There will be no disposition on the part of the Interborough to withhold anything from the city when the pooling shall commence.

Mr. Schuster.—Can you tell the Committee when the Brooklyn City Railroad Company was organized?

By Mr. Abel:

A. No.

Q. When was the Brooklyn Heights Railroad Company?

Mr. Yeoman.—Sometime about 1893. The Brooklyn City Railroad Company was organized long before that.

Senator Lawson.—Prior to 1890.

A. The Brooklyn Heights Railroad Company leased it in February, 1893.

Q. Now, was the Brooklyn Heights Railroad Company organized by the Brooklyn Rapid Transit Company? A. No.

Q. The Brooklyn Rapid Transit Company acquired the ownership sometime after it had been organized? A. Yes. It had nothing to do with the organization of the Brooklyn Heights Railroad Company. The Brooklyn Heights Railroad was organized for the express purpose of relieving the Brooklyn transit facilities. I think in the first instance the Long Island Traction Company had the lease of the Brooklyn City Railroad Company, and that company failed. The Brooklyn Heights is an outgrowth of that.

Q. Now, in addition to this equity of \$5,380,485, which I understand to be substantially an item in bills receivable held by the Brooklyn Rapid Transit Company against the Brooklyn Heights Railroad Company. The Brooklyn Rapid Transit Company includes in its capital assets, "Certificates of Indebtedness" issued by the Brooklyn Heights Railroad Company as in March, 1916, \$4,572,530. So that the Brooklyn Heights is owing the Brooklyn Rapid Transit Company in those two items approximately \$10,000,000? A. Yes.

Q. And the Brooklyn Heights Railroad Company is paying interest to the Brooklyn Rapid Transit Company? A. Yes.

Q. Did all of that \$10,000,000 go in the improvement of the Brooklyn City Railroad Company? A. That and the Brooklyn Heights Company's own railroad.

Q. Can you state approximately the part that was expended on the property by the Brooklyn Heights Railroad Company? A. Not without reference to the Brooklyn Heights Railroad balance sheet.

Q. We will have it with us to-morrow. Can you give us the part of the \$10,000,000 that was expended? A. I prefer to give you the exact figures from the company's balance sheet.

Q. You have charge of the Brooklyn City Railroad Company, do you not? A. Yes.

Q. Does the Brooklyn Rapid Transit hold any of the stock of your company? A. No, sir.

Q. What happened to the Brooklyn Rapid Transit Company that it is not charged or held as a liability of the Brooklyn City Railroad Company? A. It would not be treated as a liability by the Brooklyn City Railroad Company on account of the abrogation of the lease.

Q. But the result of these corporate relations of these three companies are large amounts of money, aggregating \$11,000,000, which has been expended in increasing the value of the Brooklyn City Railroad Company without any cost to it, is that true? A. Without any immediate cost. In the event the lease is terminated the Brooklyn City Railroad Company would have to take it over.

Q. You pay that debt? A. That is in the lease of the Brooklyn

Heights Railroad Company, February 13, 1893. It covers that situation.

Q. Then, the lease is in a way collateral on the advances or open accounts with these affiliated companies? A. It doesn't make any advances. It is a perpetual lease, and at the end of that time whatever improvements have been made on its property have to be reimbursed to the Brooklyn Heights Railroad Company.

Q. Well, what would be the result in the event of bankruptcy? A. The Brooklyn City Railroad has a \$4,000,000 guaranty fund.

Q. Four million dollars is the guaranteed payment of the rental in performance of the lease? A. Yes, of the different companies.

Q. I think I will ask you to furnish us with a copy of that lease. I take it that this lease stands in the way of a merger or an amalgamation.

Senator Lawson.—Is the Brooklyn City Railroad Company still an existing corporate body? Does it have its regular meetings?

A. I don't know about the regular meetings.

Q. Well, it has corporate meetings annually. It receives payment of its rents, so that it makes disbursements, so that the only way of merging would be outright sale by permission of the corporation now existing as the Brooklyn City Railroad Company. This lease would not interfere with that? A. Merger with whom.

Q. Well the owning corporations or the lessees could purchase with the permission of the Public Service Commission if it wanted to.

Mr. Schuster.—It would have to pay a prohibitive price would it not? Selling out at one hundred seventy or something like that.

Senator Lawson.—The Brooklyn City Railroad Company couldn't lease from the Brooklyn Heights Railroad Company.

Mr. Schuster.—A corporation with a total capital outstanding of \$200,000 represents the investment of the stockholders in that company. On that as a pivot is revolving the burden of \$10,000,000 which is an obligation held by the Brooklyn Rapid Transit Company, and at the same time providing income on \$12,000,000 of capital stock, \$6,000,000 of 5 per cent bonds,

\$200,000 of 4½ per cent bonds, and \$6,925,000 bonds, all of that stands on the point that represents an investment of \$200,000.

Mr. Yeoman.—It owns it, but it owes \$4,572,530 in the form of indebtedness.

A. But the Rapid Transit Company of Brooklyn stands behind the Brooklyn Heights Railroad Company and puts up the guaranty fund of \$4,000,000.

Senator Thompson.—What is a pyramid?

Mr. Schuster.—It rests on its largest base, not on its point. Here you have the pyramid on its point, that is inverted.

A. I don't agree with any of your characterizations. You can call them anything you like.

Senator Thompson.—I just wanted to be sure you knew what a pyramid was.

Mr. Schuster.—The fact remains, Mr. Abel, that a capital investment for the stockholders of the Brooklyn Heights Railroad Company earnings must be obtained by the operation of that company in order to take care of the interest charges on about \$10,000,000 of bills receivable and certificates of indebtedness issued to that company and held by the Brooklyn Rapid Transit Company, and about \$25,000,000 of capital issued by the Brooklyn City Railroad Company.

A. I don't think your question can be answered "yes" or "no." It implies that the Brooklyn Heights Railroad Company has an increase of \$200,000, when as a matter of fact it has \$200,000 in one form of obligation, and that is capital stock.

Q. Well, that is what the owners of that railroad put into it?

A. For that particular element, but not for the other element. That is a parallel with that indebtedness. Your question implies the criticism of our method of finance.

Q. I am not intending to criticise your financing. The fact remains, and I think you can let us assume, that the Brooklyn Heights Railroad Company is asking the Public Service Commission for authorization to issue capital. Can you conceive that the Commission would be willing to award on a \$200,000 issue of capital stock, a bond issue of \$35,000,000? A. Well it might.

It is not long since we went to the Public Service Commission and asked them to authorize a 1 per cent issue on the notes we referred to the other day, and they objected to the stock issue, but were willing to have a second mortgage issue.

Q. Your bond obligation represents your mortgage on your property? A. That might be the theory if the bondholder wanted a big capitalization.

Senator Thompson.—Couldn't these companies all be put into one company?

Mr. Schuster.—I can see how the Brooklyn City Railroad Company might be prohibited. Here is the lease made in 1893, a nine hundred ninety-nine-year lease. There is practically a guaranteed income to the holder of those securities. They have no expense except the mere expense of keeping track of their income, stockholdings, etc.

A. We have to pay them for that.

Mr. Schuster.—Now, that investment on the capital stock places this at a market premium and the Brooklyn Rapid Transit Company might go to this company as a purchaser, but the lease stands in the way. We find the same situation in the Interborough.

A. We couldn't buy it if we wanted to.

Q. It is practically prohibitive as long as the lease stands in the way of a merger. Going back to the original proposition with regard to the "Equity in Brooklyn City Railroad Construction," which has remained the same through all of the years, is there any expectation that it will ever be liquidated back to the life of its lease? A. It may run on until the lease is terminated.

Q. Is that same condition existing with reference to the certificates of indebtedness that the Rapid Transit holds? A. Yes.

Q. Are those certificates likely to remain throughout the term of this lease also? A. Well, they may.

Q. And these certificates are put up in small amounts and the B. R. T. buys them, and they are used for borrowing large sums of money for these companies. That mortgage was drawn in 1902. It was that mortgage that enabled the system to rehabilitate itself.

Q. There are amounts in the hands of the public? A. Yes, there are small amounts outstanding.

Q. Don't you accomplish substantially a capitalization here without the consent of the Public Service Commission so far as these railroads are concerned. A. We accomplish a temporary obligation which can't be permanent without their consent. Six per cent is an excessive rate of interest. That is the only question.

Q. But who has any supervision over it to question as to whether or not they are excessive? A. Every quarter, every month, we give them detailed reports of the information you have and more.

Q. To what extent do they superintend these charges of fixed capital? A. They have the right to send over examiners and check the vouchers.

Q. What do they do? A. They send them in some cases to check the books.

Q. Give us some illustrations, some cases where the examiners check your books? A. They are at the office so much of the time that I do not keep track of what they are doing.

Q. Have they ever objected to any of your items? A. To fixed capital.

Q. Do you recall any specific companies? A. I can't remember now. I think it applies to the Brooklyn Heights Railroad Company, as well as to any of the others where the city has come along and put in a water main perhaps and interfered with our tracks, and we have to spend money in connection with it. Those expenses we may charge to capital account on the theory that it was an improvement.

Q. What do you charge the interest to? A. That is deducted from the income.

Q. Is there any provision for amortization? A. No.

Q. Doesn't the commission require you to depreciate or anything of that sort? A. Yes, it recommends that the depreciation be set aside.

Q. How do you take care of the depreciation? A. By charging to operating expenses each month.

Q. What is the percentage?

Mr. Quackenbush.—The Public Service Commission on the reorganization made an order that 20 per cent of the gross revenue be set aside to cover depreciation.

Mr. Schuster.—I would like to suspend now if you have no objection.

Senator Thompson.—I have received letters from employees, most of them unsigned, with relation to the Relief Association. I have received forty or fifty of them perhaps. Some of them say they would sign their names but they would be betrayed. I have received a lot of them over in Brooklyn. Some from the employees of the Signal Company over there. They say they are putting in ten and twelve hours a day when they should work only eight.

It is a delicate situation so far as I am concerned and I do not want to hurt the company or the real interest of the people. Some of the unsigned letters found fault with the company stores. I didn't care to go into that. I simply allude to it now. My information is that they sell things below other stores.

Mr. Quackenbush.—Some years ago, in the desire to have everything done for the welfare of our men that could be done, the company established these company stores which are run at a loss to the company as you can establish to your satisfaction at any time. They are not open to the public, and in order that we might further make it convenient for the employees we arranged to issue passes to dependent women. We considered that this was our duty when money was not so plenty. Now, we have been considering the abandoning of these stores, the loss is so great.

Senator Thompson.—Some of them may have come from competitive stores.

Mr. Quackenbush.—It was experimental, and we are thinking of abandoning them.

Mr. Schuster.—I wish to offer in evidence as a part of the minutes of the committee the testimony of Dr. Adna F. Weber and Mr. Daniel L. Turner taken before the subcommittee on May 12, 1916, relating to the prior determination of the expenditures of the city and the New York Municipal Corporations under contract No. 4.

Senator Thompson.—We will suspend until to-morrow morning at 11 o'clock.

JUNE 22, 1916.

The Committee came to order at 11:30 A. M., Senator Thompson presiding.

Senator Thompson.—The Comptroller and possibly Mr. Davison not having been heard from yet, I can't say that Mr. Davison will be here; but the concern says that he will. By their common consent we will take up the matter with them after July 1st, but nothing else. I don't want a mistaken conception about it.

Mr. Moss.—I have two letters that I want to read into the record, and I may want to ask some questions of Mr. Belmont about them, so I would like for him to hear the reading.

(The witness, August Belmont is present, and in the witness chair.)

Mr. Moss.—This is a letter from Mr. Shonts, President of the Interborough Rapid Transit Company, to the Mayor, dated June 12th, 1911:

“My Dear Mr. Mayor: We have seen it stated in the newspapers that the report of the committee is going to be a compromise, offering to us substantially the lines set forth in our proposition of December 5th, last, plus certain lines in Queens to be operated through the Belmont tunnel, and offering also to construct at the cost of the City a tunnel from Brooklyn to the Battery and a subway from the Battery up Broadway to Central Park, to be operated by the B. R. T.

“It is unfortunate, if it be true, that this will be the report because it is a departure from the traditional policy of the City to round out and complete its own comprehensive subway system reaching every part of the City for a single five cent fare.

“It is unfortunate because, instead of bringing about the unification of the City, it will result in its division into two separate and independent rapid transit districts, requiring an additional fare to pass from one district into the other.

“It is unfortunate, because it places Broadway from the Battery to Central Park entirely at the disposition of one

borough, instead of reserving it as a distributing point for the residents of all the boroughs.

“ It is unfortunate because it tends to bring about an increase in real estate values in one borough only, instead of causing a uniform development of real estate operations in all of the boroughs. * * * ”

Mr. Moss.— That relates, of course, to giving the B. R. T. the privilege of running up Broadway to 59th Street.

(Mr. Moss continues reading of letter) :

“ * * * It is unfortunate in that it loses sight of the importance of the principle that a universal five cent fare in a large city is possible only because the company is enabled to make up its losses on long hauls by the great volume of short haul business. All of our traffic statistics show that after the City's existing subway is extended from Times Square down Seventh Avenue to the Battery, there will not be left for many years to come sufficient business to warrant the construction of an entirely independent subway from the Battery to Central Park. In other words, there will not be enough short haul business below Central Park in the near future for the present City subway in Fourth Avenue, a new subway in Broadway, a new subway in Seventh Avenue extended to the Battery and the subway now in operation under Sixth Avenue. All of our traffic statistics were submitted to the committee which is about to make this report and so far as we are informed, their correctness has not been assailed.

“ It is unfortunate, therefore, that the City is urged to expend its own money in the construction of an unnecessary subway in the short haul district, the effect of which can only be to make it impossible for the City's own subway to be put upon a basis which would permit the money invested in it to be released for use over again in outlying extensions. As to subways the City is in the railroad business, and it ought not to build unnecessary railroads in the heart of the City at the expense of the development of the residential districts. This is especially true when the City's means are so limited that it cannot expand its subway system until its own opera-

tions make free the credit necessary for such expansion. The reports of our experts show that any extension of the B. R. T. above Fourteenth Street and the assumption of the additional carrying charges in the simplest extensions on the east side and the west side by the Interborough would result in earnings \$1,700,000 less than its fixed charges. All of these reports were submitted to the committee in our conferences, and are always subject to inspection by any City officials having a duty in the premises.

"In May, 1902, the Rapid Transit Board declared that the present subway 'formed only a part of a more comprehensive system which the board intended to lay out as soon as the financial condition of the City should permit.' On April 28, 1904, the Rapid Transit Committee reported that 'if carried out there would be constructed with the least possible expenditure of time and money two complete through lines of travel, one an east side and one a west side line, which would follow logical lines of development and avoid any unnecessary duplication of facilities and consequent waste of public money, also for one rate of fare.' The present report does not avoid '*unnecessary duplication of facilities and consequent waste of public money,*' nor does it provide '*one rate of fare.*'

"It is unfortunate that after laws have been passed and have been put to the test of practical working, and have proved satisfactory for the regulation of public utilities, that the City of New York should be urged to disregard these wise laws and find it necessary to go back to the methods long ago found economically unsound and wasteful, in order to secure efficient transportation for the people of this City.

"It seems also unfortunate and perhaps presents a nice ethical question for the City to attempt to destroy the business of its own tenant which has discharged faithfully every obligation to the City, and whose successful operation of the City's property has made it possible for the City to have the money to use to increase its transit facilities.

"I am sending you this communication in order that you may have before you for consideration the outlines of some of the reasons of the Interborough Company for the position

which it has been obliged to take with the committee. As you are aware, our company has advocated one City owned system and one five cent fare for all boroughs, and has offered to assume risks, even beyond the bounds of good business prudence, in order to meet what we supposed were the wishes of those who have a proper regard for the City's present investment, and for fair play to those who pay the fares and meet the burden of the taxes.

“Yours very truly,

“T. P. SHONTS,

“President.”

Mr. Moss.—Now, this letter is just a week ahead of the damnable rascality letter.

Senator Thompson.—(To Mr. Belmont.) I was just going to say, a little matter that I overlooked — the only expert horseman we have on the Committee is Senator Towner. And in honor of that fact, and in honor of the fact that you are also a horseman, I thought I would allow him to preside today, in recognition of that fact.

Senator Towner.—That remark was lost on me.

Senator Towner takes the chair.

Mr. Moss.—This period of 1911 is so complicated in dates and events and counter-movements that I am going to ask the Committee to spread on the record at this point a short extract from the Report of the Public Service Commission in Volume I., 1911 — the printed annual report, beginning at page 42. This short section of this report gives every step in the conduct of the proceedings, the succeeding reports and the counter movements of the parties that apparently were in conflict — the Interborough and the B. R. T., during that period, during a period shortly afterwards and before matters had settled down.

Extract from Annual Report, 1911, The Public Service Commission of the First District, State of New York. Volume I., Chapter II. Pages 42-54:

PLANS FOR ADDITIONAL RAPID TRANSIT FACILITIES.

In its last annual report the Commission stated the progress that

had been made in the development of the Tri-Borough Rapid Transit System. The Commission had before it bids for construction of 21 sections on the Lexington Avenue, Canal Street and Broadway-Lafayette routes. While these were under consideration a proposition was received from the Hudson and Manhattan Company and one from the Interborough Rapid Transit Company for extensions and additions to its system so comprehensive that the Commission deemed it important to confer with the Board of Estimate and Apportionment of the city, the board whose approval is essential to each formal step in rapid transit matters. During the first half of the year the time of the Commissioners was largely taken in conferences with the Committee of the Board of Estimate and Apportionment and with representatives of the companies interested. The applications of the companies, the joint report of the Special Committee of the Board and of the Commission and the propositions submitted to the companies with their replies are set forth in full in Appendix A hereof. A brief summary of the matter is as follows:

The Public Service Commission, under date of December 20th, 1910 (See Annual Report, Vol. I, p. 71) submitted to the Board of Estimate and Apportionment the proposition of the Interborough Company of December 5, 1910 (*idem*, Vol. I, p. 67), stating that the Interborough's proposition was acceptable to the majority of the Commission "provided certain features not then satisfactory could be properly adjusted." As it would necessarily take a considerable time for the preparation and approval of the formal contracts and their transmission to the Board of Estimate and Apportionment the Commission wished to ascertain whether the general proposition of the Interborough Company would be acceptable to the Board of Estimate and Apportionment, stating that if it were disapproved the contracts for the construction of the Tri-Borough System which were then awaiting award could be promptly acted upon and construction work immediately begun. December 22nd, 1910, the Board of Estimate and Apportionment referred this communication of the Public Service Commission to its standing transit committee, consisting of the mayor, the comptroller and the President of the Board of Aldermen. January 5, 1911, a majority report of the transit committee was sub-

mitted, signed by the Comptroller and the President of the Board of Aldermen. This report strongly opposed the adoption of the Interborough proposition, condemning various features of the proposed proposition, including the terms for the elevated extensions and third tracking. The main objection, however, was based on the fact that the proposed subway extensions of the Interborough would not form a system capable of recapture and independent operation after the expiration of a ten-year period. The report offered the following resolutions for adoption:

“First—That the available credit of the city be devoted to the construction of an independent municipally owned and controlled subway system whose integrity as an operating unit can be forever maintained.

“Second—That the present or future available credit of the city shall not be lent, in whole or in part, to any existing corporation or individual, for the extension of any existing system of subways until such independent system shall be completed and in operation.”

The Mayor, under date of January 11, 1911, submitted a separate minority report strongly favoring the adoption of the Interborough proposal.

January 5th, 1911, the Board of Estimate and Apportionment referred the general subject to a sub-committee with authority to confer with the Public Service Commission, which authority was extended on January 31st to include conferences with the Interborough Company as well. The Mayor named the Presidents of the Boroughs of Manhattan, The Bronx and Richmond as members of the conference committee. This Committee and the Public Service Commission conferred together as a joint body and on June 5, 1911, submitted a report signed by all the conferees.

Proposition of the Brooklyn Rapid Transit Company—January 10, 1911, the Brooklyn Rapid Transit Company submitted to the Public Service Commission a proposal for the operation of the Fourth Avenue subway, for the construction of an extension of this route across Manhattan Island and for the elevation of its South Brooklyn lines and their operation in connection with the Fourth Avenue system. The proposal provided also for a subway

on Flatbush Avenue connecting the Brighton Beach line with the Fourth Avenue subway. It also provided that the present Third Avenue elevated line in Brooklyn should be extended to Fort Hamilton and operated south of Thirty-eighth street as a part of the Fourth Avenue subway. March 2, 1911, the Brooklyn Rapid Transit Company submitted a much more comprehensive proposition, further supplemented by its proposals of April 25 and May 2, 1911. The plan submitted did not call for the use of any street in the Borough of Manhattan, for which application had been made by the Interborough Company, though in Brooklyn it did propose to take over the Eastern Parkway extensions and the Fourth Avenue line. In addition, the company proposed that a new subway in Manhattan be laid out from the Battery to Fifty-ninth street by way of Church street, Broadway and Seventh Avenue with an extension on Fifty-ninth street across the Queensboro Bridge to a conjunction with the Brooklyn Company's elevated system, and that the Broadway line be connected with the Flatbush Avenue and other subway lines in Brooklyn by the construction of a new tunnel at the Battery under the East river and Atlantic avenue. The company proposed that it construct at its own expense elevated extensions to Jamaica, to Bay Ridge and between the Williamsburg Bridge and the Queensboro Bridge; also that the company elevate at its own expense its present steam surface lines in South Brooklyn, and also the line from Ridgewood to Fresh Pond road. It proposed to third-track its present elevated lines on Fulton street, Myrtle avenue and Broadway. It proposed an extension of the present Centre street loop from the Brooklyn Bridge, through Nassau and Broad streets, to the Battery tunnel, and two connections between the Centre street loop and the Broadway line. It proposed also to operate, whenever built, a tunnel between Brooklyn and Staten Island.

As it was suggested that the use of Broadway from the Battery to Fifty-ninth street for the purposes of a Brooklyn connection might result in the withdrawal of the Interborough Company's offer, the Brooklyn Company expressed its willingness to equip and operate the Broadway-Lexington avenue route—part of the Tri-Borough system, with proposed Bronx exten-

sions. The Brooklyn Company on April 25th accordingly submitted a supplementary proposition, offering to operate the following additional lines:

“ 1. The proposed Lexington Avenue section of the Tri-Borough route, from Ninth street north to The Bronx;

“ 2. The Southern Boulevard and Westchester Avenue line, as a subway, as far as the Bronx river;

“ 3. The Jerome Avenue line as far as the Kingsbridge road.

“ 4. Elevated lines proceeding easterly from the Queensboro Bridge to

“ (a) Astoria, and

“ (b) Woodside and Corona;

“ 5. The proposed line running easterly from Union Square, Manhattan, under the East river to the Eastern District of Brooklyn to East New York, the precise route in Brooklyn to be determined hereafter;

“ 6. The Nostrand Avenue extension, from Eastern Parkway to Flatbush avenue; and

“ 7. Livenia Avenue extension, from the Eastern parkway at Buffalo avenue to New Lots road.”

The company offered to operate also, on an extension basis—that is, the losses from operation to be carried by the city, subject to liquidation from the surplus profits of the inner lines—the following:

“ 1. The northern section of Westchester Avenue line, from the Bronx river to Pelham Bay Park:

“ 2. The northern section of the Jerome Avenue line, from Kingsbridge road to Woodlawn;

“ 3. An elevated extension on Utica avenue, Brooklyn, running south from the Eastern Parkway; and

“ 4. The tunnel from the present terminus of the Fourth Avenue subway, in Brooklyn, under the bay to Staten Island.”

The operating terms proposed by the Brooklyn Company in its supplementary offer included the following:

The city was to pay the cost of construction of all subways and all elevated lines not at present contiguous to the Brooklyn system, while the company was to pay the cost of extending and third-tracking its own lines, and the cost of equipment of all lines.

The gross receipts from the operation of its entire elevated and subway system, including the present elevated line of the company, were to be pooled. From the gross receipts were to be deducted (1) operating expenses and an amount equivalent to the net earnings of the existing lines operated by the Brooklyn Rapid Transit System, in connection with the proposed new lines "as of the year preceding the beginning of operation under the proposed contract with the city." (2) Interest and amortization upon the new capital supplied by the company both for construction and equipment. (3) Interest and amortization upon the cost to the city of the lines constructed by it.

After making the above deductions, surplus receipts were to be divided equally between the city and the company. Future extensions required by the city and not concurred in by the company were to be operated by the company on the following special basis:

"The accounting of receipts upon extensions to be based upon the value of the tickets collected at the stations on each, with the miscellaneous station and way earnings; and the expenses of operation to be ascertained upon the passenger basis, to be determined according to unit costs on the entire system, covered by the contract, including the extensions.

"After the payment of the expenses of operation there shall be paid out of earnings the actual annual charges for carrying the cost of equipment necessarily and properly allotted to each extension, and for providing a proper sinking fund; and that from the balance then remaining shall be paid interest and sinking fund upon the bonds issued by the city to defray the cost of construction."

That where the income is insufficient to meet the foregoing charges, any deficits shall be paid annually by the city; and

"That all of the remaining net proceeds, after the deductions have been made, shall be divided in proportion of

three-fourths to the city and one-fourth to the company."

Report of Conferees, June 5, 1911. The report of the conferees submitted June 5, 1911, proposed substantially uniform terms for the operation of future subways, outlined a comprehensive system for immediate construction and proposed that one portion of the new rapid transit lines should be offered to the Interborough Company and the other portion to the Brooklyn Rapid Transit Company and that if either company declined to accept the portion offered it, such portion would then be offered to the other company; and in case both companies declined to accept, the city would proceed at once with the construction of the Tri-Borough route. Under the proposed division of lines the Interborough was to secure all of the extensions in The Bronx, the two elevated extensions in Queens, the Eastern Parkway and the Nostrand Avenue lines in Brooklyn and the completion of the "H" system and a Queensboro Bridge and Steinway Tunnel connection in Manhattan. The Brooklyn Rapid Transit Company was offered important subway and elevated extensions in Brooklyn, including the operation of the Fourth Avenue system and was also offered important distributing lines for its entire rapid transit system through the business sections of Manhattan including the extension of the Centre Street subway through Nassau street to the Battery and the Broadway and Fifty-ninth street line. Briefly summarized, the operating terms provided for a single five-cent fare and for an operating lease limited to forty-nine years with the right reserved to the city to take over the lines at any time after ten years on payment of the operator's money investment plus an amount not exceeding 15 per cent. and decreasing year by year and also the then reasonable value of the equipment. The proposed terms provided further that the net profits derived from all lines should be divided equally between the city and the operator after provision had been made for carrying charges in the following order:

"1. The actual annual charges of the operator for carrying the cost of equipment; with provision for a sinking fund not to exceed three-fourths of one per centum per annum to meet obsolescence;

"2. The actual annual charges of the operator for carrying any portion of the cost of construction not met from the

funds of the city; with provision for a sinking fund thereon (including brokerage charges, not to exceed three per centum) of not more than one (1) per centum per annum.

" 3. Interest on bonds issued by the city to defray costs of construction or costs of real estate or easements, with provision for a sinking fund not to exceed one (1) per centum per annum.

" Provided —

" 4. That if the gross income in any year, after providing for operating charges, shall be insufficient to cover interest and sinking fund upon the operator's bonds, the deficit for such period shall be borne by the operator solely; and

" Provided further —

" 5. That if the gross income in any year, after providing for all charges, including interest and sinking fund on the operator's bonds, shall be insufficient to meet the interest and sinking fund upon the city's bonds, the deficit sustained for any such period shall be treated as cumulative and be a charge in the city's favor against future profits, to be made good before any equal division of profit shall proceed between the city and the operator; and

" 6. All of the city's proportion of profits remaining after the payment of operating expenses and carrying charges, and all of the operator's proportion of such profit, over and above an additional allowance of three (3) per centum annually upon his total investment in construction and equipment, shall be applied to the reduction of deficits arising from the operation of extensions, so long as such deficits exists, before the further division of profit proceeds."

It was proposed further that each contract contain a clause under which the operator would agree to operate additional lines on the following conditions:

" (a) That such new line, whenever accepted as part of the general system by both the city and the operator, shall be governed by and included in all of the general provisions of the contract with relation to operation and the division of profit and loss;

“(b) That where such new line is required by the city, but not accepted by the operator as an original line, it shall be operated as part of the general system, but carried on a separate financial basis with separate accounting of receipts and operating expenses; and

“(c) That the deficits on extensions operated separately shall be treated as cumulative and discharged, so far as practicable, from the surplus receipts of the general system, as heretofore provided.”

It was further proposed that in determining the operating expenses of present or future extensions that expenses not definitely separable from the expenses of the entire system should be divided on the cost per passenger basis to be determined according to unit costs on the entire system.

The report as above with a few minor amendments was unanimously adopted at a meeting of the Board of Estimate and Apportionment held June 21, 1911.

The Interborough Company immediately rejected almost in toto the terms of the proposed offer while the Brooklyn Rapid Transit Company accepted the offer with certain minor modifications. June 29, 1911, the conferees adopted an amended report accepting the modifications proposed by the Brooklyn Rapid Transit Company and modifying somewhat the terms proposed for the Interborough Company. The amended report was adopted by the Board of Estimate and Apportionment June 30. In accordance with the terms of the amended report, the Brooklyn Rapid Transit Company notified the conferees under date of July 5, 1911, of its willingness to operate additional lines rejected by the Interborough Company as proposed in the report of the conferees. Negotiations were, however, continued with the Interborough Company as it was deemed highly desirable to secure, if possible, an agreement with that company for the construction and operation of the logical extensions of the subway system operated by it. June 20, 1911, the conferees made a supplementary report stating that they had reached an agreement with the Interborough and recommending that a contract be entered into. The report was not signed by Commissioner Maltbie, who filed a statement opposing the proposed terms. Nor was the report signed by Commissioner Cram, who had not participated in any of the conferences.

The terms proposed that the gross receipts of all lines, both new and old, be pooled and that after the payment of operating expenses they be distributed as follows:

“(a) The interest and sinking fund charges upon the bonds of the city issued for the construction of rapid transit lines under the present rapid transit contracts.

“(b) An amount to be retained by the company during the entire period of the contract equivalent to five per cent. interest and one per cent. sinking fund charges upon the capital contributed by the company for either construction or equipment of the proposed and existing subways, with three per cent. additional as compensation to the company for the pooling of the receipts of the existing lines with those of the new lines, the levelling of the leases upon the old and new lines, the exchange of leases upon the east and west side lines in Manhattan, and for services in connection with the operation of the property; it being understood that the amount of capital contributed by the company to the existing subway system for construction and equipment as of June 30, 1911, amounts to the sum of \$48,029,668; the basis for the allowance in question to be, nevertheless, the exact sum expended upon construction and equipment. These allowances, which are not to exceed nine per cent. in all, to be upon all capital new and old furnished by the Interborough Company during the period of the contract, and to be cumulative; the deficits, if any, to be adjusted on a yearly basis out of a fund to be provided therefor by the company as part of its capital investment; the allowance made to the company upon the bonds or notes issued for this purpose not to exceed interest charges thereon.

“(c) A sum representing the interest and sinking fund charges upon the capital invested by the city in the said new lines; deficiencies in the amount required to meet such charges from the date of the operation of said new lines to be treated as cumulative and to be met from the receipts of the system before further distribution of profit proceeds.

“(d) A sum representing the difference between the interest and sinking fund charges of the city upon its investment

in the said new lines, up to and including an aggregate of nine per cent. upon the investment of the city in the new lines before the further distribution of profit proceeds; and

“(e) An even distribution between the city and the company of all profits after the foregoing charges have been met; such division to proceed throughout the remainder of the term of the leases from the city to the company.”

It was also proposed that extensions required by the city and not agreed to by the company should be equipped and operated as a part of the Interborough system under the general terms of the Interborough's offer of December 5, 1910, and May 9, 1911, except that operating expenses of such extensions would be determined on the cost per passenger basis.

The proposed terms were rejected by the Board of Estimate and Apportionment at a meeting held July 20, 1911. The Comptroller, the Mayor, the President of the Board of Aldermen and the President of the Borough of Brooklyn voted for the rejection of the proposed terms. The next day, July 21, 1911, the Board of Estimate and Apportionment adopted a resolution asking the Public Service Commission to prepare contracts granting to the Brooklyn Rapid Transit Company or to a new company organized by it the lines originally proposed for the operation of the Interborough Company. The resolution also requested the Public Service Commission to proceed with the letting of contracts subject to the approval of the board of such portions of the proposed subway as were to be constructed with city money.

The newspaper accounts of the conferences and of the correspondence have led to a general public impression that a contract had been made with the Brooklyn Rapid Transit interests. Such a course is not possible under the present law. Three important steps are necessary before rapid transit is provided:

First, Legalization of a route requires:

“Adoption by Public Service Commission of resolution laying out the route.

“Approval of route by Board of Estimate and Apportionment and by Mayor.

“Securing of consents of one-half in value of property

owners, or, if refused, report in favor of by Commissioners appointed by the Appellate Division."

Second, Construction requires the following steps:

"Preparation of contract plans.

"Preparation of form of contract and receiving of approval of Corporation Counsel thereto.

"Advertising for bids.

"Acceptance of bid and submission of contract to Board of Estimate and Apportionment.

"Approval of contract and making of appropriation by Board of Estimate and Apportionment.

"Execution of contract and commencement of work."

Third, Equipment and Operation requires:

"Preparation of form of contract and securing of approval of Corporation Counsel thereto.

"Advertising for bids.

"Acceptance of bid by Public Service Commission.

"Approval by Board of Estimate and Apportionment.

"Execution of contract."

The following important contingencies are however to be noted: If a route is an extension of an existing municipally constructed road a contract may be made directly with the lessee thereof for the construction, equipment and operation, without public bidding. A certificate may be issued, without public bidding, for extensions or additions to an existing privately owned line.

These are vital in considering the methods to be used in following out the general program with the Brooklyn Rapid Transit. That company is not the lessee of a municipally constructed road, consequently none of the lines may be granted to it as an extension. It is proposed that city money be used for construction, consequently it is not possible to grant a certificate to the company. It is therefore necessary that public bidding be invited and that routes be laid out so as to make bidding possible.

The Commission has made substantial progress toward the execution of the general program agreed upon with the Board of Estimate and Apportionment.

In the first place, certain parts of the system outlined in the joint report were not legalized. Consequently the Commission proceeded to lay out such portions of the system by the adoption of appropriate resolutions. The details as to the various steps taken in the validation of routes are set forth in Appendix E to this report. It is sufficient to say that the resolutions validating the Eastern Parkway route and the Fifty-ninth Street-Astoria-Woodside route have been adopted by the Public Service Commission and by the Board of Estimate and Apportionment, but have not as yet been approved by the Mayor. These routes are parts of the general layout that had the unanimous approval of the Board of Estimate and Apportionment.

In the second place, the Commission is making progress with contracts for construction with municipal money. Even before final action by the Board of Estimate and Apportionment the Commission began awards of contracts on the Lexington Avenue route. As noted above, approval and appropriation by the Board are essential before execution of contracts and commencement of work. The following table shows the substantial progress already made in getting work under contract.

Route section No.	Date of award by P. S. C.	Date of approval by Bd. of Est.	Date of execution	Amount of contract
6.....	July 5, 1911	July 21, 1911	July 21, 1911	\$3,634,213.50
8.....	July 5, 1911	July 21, 1911	July 21, 1911	3,369,484.20
10.....	July 5, 1911	July 21, 1911	July 21, 1911	3,253,072.80
11.....	July 5, 1911	July 21, 1911	July 21, 1911	3,132,196.05
12.....	Aug. 1, 1911	Aug. 3, 1911	Sept. 13, 1911	2,825,740.74
13.....	Oct. 31, 1911	Nov. 16, 1911	Nov. 17, 1911	4,071,416.50
15.....	Oct. 10, 1911	Oct. 26, 1911	Nov. 17, 1911	3,820,139.75
5.....	July 26, 1911			2,419,127.20
9.....	Dec. 3, 1911			1,961,997.00

Section 7 was awarded to the lowest bidder, who failed to qualify, and it will be readvertised. On sections 1, 2, 2-a, 3, 4 and 9 the bids were rejected. On section 9 this was due to the fact that there had been only one bidder. On the other sections the Commission considered it important to make such extensive changes in the plans as to necessitate rejection of the bids and readvertisement. Section 9 was readvertised and has been awarded to the lowest bidder as shown above. Section 3 is now being advertised

for bids to be opened on January 11, 1912, and section 2 for bids to be opened on January 22, 1912. The others will be put up for bidding as rapidly as the revised plans can be completed. The bids on the Canal Street line were rejected owing to excessive cost which indicates that it might be necessary or desirable to make some modification of plans, if possible, to effect a reduction. In this connection it may be stated that the Commission during the period of conference with the committee of the Board of Estimate had decided on a change reducing the dimensions of the bore as originally planned. This in itself was not a sufficiently radical change to cause the rejection of bids.

In the third place, the Commission has made progress in the matter of equipment and operation. This is a matter that can proceed entirely independent of contracts for construction. Counsel for the Brooklyn Rapid Transit interests have submitted informally a form of contract for equipment and operation. The general subject is being given careful consideration by the Commission and its legal department. This form of contract requires most careful thought and study. Consequently the Commission is not prepared at this time to state even its general features other than to say that as finally worked out it should present either a system that can be bid upon by more than one company or alternative routes that may be chosen by prospective bidders to make up a system.

Mr. Moss.—I find printed in The American of May 10th, 1912, this statement of President Timothy S. Williams of the Brooklyn Rapid Transit Company. He said: "I still stand by the terms of my letter to The New York American on July 19th last." July 19th is the date of the "damnable rascality" letter.

I still stand by the terms of my letter to the New York American on July 19 last, in which I said:

"We have not withdrawn our offer to equip and operate the additional lines to be allotted to us in the Board of Estimate resolution in the event that no agreement should be reached with the Interborough Company.

"We have been absolutely consistent in our attitude. At the request of the city and in order to enable the city to meet

the threatened withdrawal of the Interborough Company, we agreed to equip and operate the entire Tri-borough system.
* * *

Mr. Moss.— I interject here that this resolution is as to whether the Tri-borough system was a practical system and could be built with any hope of success. But this was an offer by the B. R. T. to build and operate the Tri-borough system.

(Continues reading of letter):

“ * * * We have at all times been willing to take the larger system if the city should so determine.

“ The New York American has stood so firmly and splendidly for fair play, honesty and frankness in this fight that I am unwilling by silence to allow our attitude to be misrepresented.

“ Our offer as set forth in that letter still holds,” Colonel Williams added. “ It has never been withdrawn and never will be. I have told McAneny and other members of the Board of Estimate and the Public Service Commission within the last day or so that we expect to carry out every detail of that offer if it is awarded to us.

“ Mr. McAneny’s position on this question seems to me to be both clear and logical. Brooklyn and Queens are to-day isolated completely from Manhattan. They have no direct transit connection in Manhattan. The present fight is to enable residents of these boroughs to obtain the same advantage of a thorough ride for a single fare from their homes to their places of business in Manhattan accorded to residents of Manhattan and the Bronx. That is all there is to it.”

Mr. Moss.— Now by referring to the offer of the B. R. T. to build and operate the Tri-borough system, I find in this section of the report of the Public Service Commission for 1911, which I have asked you to put into the record, a statement of the terms; and those terms are stated as follows:

“ 1. The actual annual charges of the operator for carrying the cost of equipment; with provision for a sinking fund not to exceed three-fourths of one per centum per annum to meet obsolescence;

" 2. The actual annual charges of the operator for carrying any portion of the cost of construction not met from the funds of the city; with provision for a sinking fund thereon (including brokerage charges, not to exceed three per centum) of not more than one (1) per centum per annum.

" 3. Interest on bonds issued by the city to defray costs of construction or costs of real estate or easements, with provision for a sinking fund not to exceed one (1) per centum per annum.

" Provided —

" 4. That if the gross income in any year, after providing for operating charges, shall be insufficient to cover interest and sinking fund upon the operator's bonds, the deficit for such period shall be borne by the operator solely; and

" Provided further —

" 5. That if the gross income in any year, after providing for all charges, including interest and sinking fund on the operator's bonds—shall be insufficient to meet the interest and sinking fund upon the city's bonds, the deficit sustained for any such period shall be treated as cumulative and be a charge in the city's favor against future profits, to be made good before any equal division of profit shall proceed between the city and the operator; and

" Mr. Moss.— You will notice that the cumulative feature is not for the operator, but for the city.

" 6. All of the city's proportion of profits remaining after the payment of operating expenses and carrying charges, and all of the operator's proportion of such profit, over and above an additional allowance of three (3) per centum annually upon his total investment in construction and equipment, shall be applied to the reduction of deficits arising from the operation of extensions so long as such deficits exist, before the further division of profit proceeds.

" It was proposed further that each contract contain a clause under which the operator would agree to operate additional lines on the following conditions:

" (a) That such new line, whenever accepted as part of the general system by both the city and the operator, shall be

governed by and included in all of the general provisions of the contract with relation to operation and the division of profit and loss;

“(b) That where such new line is required by the city, but not accepted by the operator as an original line, it shall be operated as part of the general system, but carried on a separate financial basis with separate accounting of receipts and operating expenses; and

“(c) That the deficits on extensions operated separately shall be treated as cumulative and discharged, so far as practicable, from the surplus receipts of the general system, as heretofore provided.

Mr. Moss.—Now, that is the proposal of the B. R. T. which the B. R. T. stood ready to carry forward on the lines of the Triborough system as projected by the City at the time of these counter negotiations.

Then there is this letter of May 6th, 1912. This is from Mr. Shonts to the Mayor:

“My Dear Mr. Mayor: I beg leave to inclose you herewith copy of letter mailed by me to President McAneny, on May 4th, which letter was written pursuant to formal written notice from our bankers, under date of May 3d, confirming a verbal notice of the same date, which was communicated by telephone to you through your Secretary, Mr. Adamson immediately upon receipt.

“In a conversation with Mr. Morgan to-day he told me that the situation down town was so unsatisfactory that he might be compelled to withdraw in any event. However, if the Board of Estimate and Apportionment should vote favorably on Thursday of this week, the 9th instant, on the Interborough's proposition, he would undertake to finance the deal, although he says he may have to ask for more liberal terms. I told him that it would be impossible for us to enter into the deal if the terms for money were any more onerous than those already agreed upon.

“I want you, as Mayor of the City and, ex-officio, Chairman of the Board of Estimate and Apportionment, to know the seriousness of the situation in case your Board does not

act favorably upon our proposition at next Thursday's meeting.

"Very truly yours,

"T. P. SHONTS,

"President."

Mr. Moss.—And that enclosed this letter — May 4th, 1912.

"My Dear Mr. McAneny: As you are aware, the Interborough Company made arrangements with Messrs. J. P. Morgan & Company to finance the Interborough Company's proposition for Rapid Transit Improvements made to the Public Service Commission February 27, 1912; accepted by that body March 13, 1913, and referred to the Board of Estimate and Apportionment for its approval.

"Our agreement with the bankers was based upon our understanding with the City officials that the proposition, as made, was acceptable to the majority both of the Public Service Commission and the Board of Estimate and Apportionment, and would be promptly acted upon and formally approved by both of those bodies.

"Because of the unexpected delay on the part of the Committee of which you are Chairman in making a report to the Board of Estimate and Apportionment action by that body has been delayed until now. Under date of May 3, 1912, our bankers have notified us in writing that, because of changed conditions, if they do not hear from us in the next few days that our proposition has been accepted by the responsible City authorities they will be compelled to cancel their existing agreement with us to finance the proposed rapid transit improvements.

"I therefore trust that our proposal of February 27, 1912, may receive the formal approval of the Board of Estimate and Apportionment at its next meeting.

"Very truly yours,

"(T. P. SHONTS),

"President.

"Hon. George McAneny,

Chairman Rapid Transit Committee,

Board of Estimate and Apportionment,

City Hall, Manhattan."

Mr. Moss.— Mr. Belmont, you knew of course of the payment to Mr. Morgan's house of \$500,000 in November, 1912?

Mr. Belmont.— Yes.

Q. (Mr. Moss.) And when negotiations were resumed you expected, if those negotiations had failed, that you would make another payment to the Morgan house for their service, didn't you? A. (Mr. Belmont.) That if the negotiation failed?

Q. Yes; that if the negotiations that had been resumed in the latter part of 1911 had again failed, you would again have to make some payment to the Morgan house for their trouble? A. Well, I presume so. This was like a verbal option.

Q. Exactly; but the situation was just as it had been previous? A. I can't answer you a hypothetical case.

Q. I don't propose a hypothetical case. A. You say, if we had resumed we would have to pay an additional amount. I am unwilling to state that, because I don't know, whether they would have considered the original payment sufficient or whether they would want more — dependent upon the time and how large a sum and for how long they would expect that.

Q. When you took the matter up with Mr. Morgan originally, there was no agreement to pay him for services, was there? A. No, no definite agreement; but nobody has relations of that kind without expecting compensation.

Q. That is what I thought. And a line having been drawn under the matter, to use Mr. Morgan's expression, so that he sent in his two bills, each for \$350,000; those were paid and the matter was closed. Then, according to his testimony, it was resumed and if it had failed again, wouldn't you have expected to have paid what might be the reasonable compensation for his services? A. If he had repeated the operation of keeping a large sum at our disposal, I imagine we would have; but I don't recall anything being said on it.

Q. And also continuing to consult with your people and with the City's people — that was the basis for \$250,000 of his charge. You would expect something like that, too, wouldn't you? A. Well, I don't know. To express an opinion on conditions that are only supposable, and —

Q. I am not asking you so much to express an opinion as to

express the view that you took of the relation that you resumed at the Morgan house when you resumed a relation with the Morgan house for taking up this matter again didn't you expect that it would be upon a business basis and that it would follow the course that had been taken in the original matter? A. Not the same course.

Q. A similar course? A. A course in accordance to the banking customs.

Q. Well, was the first action, and the payment for the first action, in accordance with ordinary banking customs? A. Yes, it was. Of course there was no fixed obligation, but a moral one. There was no fixed obligation on the part of the firm of Morgan; really, as a matter of fact, it was an exceptional service that they performed — quite exceptional.

Q. Services were rendered and they were accepted and they involved the expenditure of time and effort. A. And they were moderately paid for.

Q. That is another question. I am asking you if there was any — I will put it this way: Was there any change or any different arrangement — any statement of any change or different arrangement when the matter was resumed? A. I couldn't tell you.

Q. Do you know of any? A. I don't know of any. I don't know what may have transpired between Mr. Shonts and Morgan.

Q. Wasn't this letter of Mr. Shonts which I have read in your hearing addressed to Mr. McAneny, and then a copy of it sent to the Mayor, wasn't this letter designed to frighten the City authorities and force their hands so they would close with the Interborough? A. I don't think so at all. It is a statement of facts.

Q. Do you really believe that Mr. Morgan intended to withdraw this money and withdraw from the transaction if it wasn't quickly closed? A. I don't for a moment believe that Messrs. Morgan would make a statement of that kind which wasn't based upon the fact — that they didn't care to go on with a piece of business of this sort indefinitely and on terms which they didn't consider were satisfactory. The statement that they make there is one which I believe. And I decline to join in any imputation that that was a bluff. That is what you want to get me to say.

Q. I don't want to get you to say anything, Mr. Belmont. Please don't take the attitude that the Comptroller monopolized

the other day, of implying motives. I say to you what I said to him about the questions that I ask, and what I said to Mr. Morgan when he started on that line; he was a gentleman and apologized, and we got along pretty well after that. I am putting to you the questions that I have to because of certain information and certain complaints and certain statements that have been made to this Committee and its counsel by various people, and because if these questions are not put counsel and the Committee will be under some imputation of bad faith in having been unwilling or afraid to put questions. Now, I am going to put questions to you in a lawyer-like way and I don't want you to assume or make statements to be implying some malicious motive or some bad faith on my part. A. Very well.

Q. There is no reason why you should do it and you and I are looking each other in the face while I talk to you about it. A. Will you try to make your questions short then?

Q. Never mind about making my questions short. I am making them long sometimes because you don't answer quick. When this record is closed, Mr. Belmont, and my children, perhaps, read the questions that I have put to the witnesses, I want people to know that I have put all the questions that were necessary to bring out the propositions that are afloat, and that no one can say, "The lawyer here didn't do his duty." If I don't do my duty and ask the right questions it is because I haven't the information and don't know how.

Now, I am bound to ask you that question because it has been said over and over again, and put up to this Committee, whether you knew it or not.

The question I am asking is: Was there an intent and purpose on the part of the Morgan house and those that were closely associated with him to make an appearance to the City of a willingness to withdraw or an anxiety to withdraw, which could be used by friends of the Interborough in the City's departments to help carry the matter through, and which could be used to frighten those who might fear that the transactions of the Rapid Transit would fail if something wasn't done along the lines in which you and Mr. Morgan were interested. And that is why I ask you if you have any knowledge or any information as to whether the

Morgan house really meant to stand upon that or whether it wasn't a tactical step. And I suppose you will stand upon what you have said before? A. I will repeat that I believe that their statement was as they put it.

Q. Don't you know, or are you not informed that the Morgan house and other great financial interests in this City, centered in this City, had joined in a movement to control both the B. R. T. and the Interborough through this method of a contract with the City? A. I never heard of that — that there was a combination to control both corporations?

Q. Yes. Did you know that the B. R. T. raised its forty million dollars and became liable for interest on it before any contract was signed? A. You mean as a definite and irrevocable business transaction?

Q. As a transaction that involved the payment of interest on forty million dollars before anything had been done that fastened the City down. A. No, I didn't know that.

Q. Well, that was Kuhn, Loeb & Co. They weren't born yesterday; they know what they were about in finance, and Kuhn, Loeb & Co. are not unfriendly to Morgan house, are they? I am asking you as a banker who must know the situation of things in town. I don't propose to comment upon the relations between the banking houses. A. I don't know.

Q. Well, I ask you, isn't it well known, and don't you know, that Kuhn, Loeb & Co. and Morgan & Company are two of the elements composed of five great organizations that work together in handling large enterprises? A. That is not for me to express an opinion on.

Q. I am not asking you to express an opinion. Don't you know? A. That is an opinion.

Q. Don't you know? Don't you, as a banker, have to take cognizance of that fact? A. State the fact, if you please.

Q. The fact that Kuhn, Loeb & Co. and J. P. Morgan & Company are two elements in a combination of five great financial houses that work together in carrying out large financial transactions? A. Oh, in a general way, yes.

Q. And if one of those five elements takes up a matter neither of the other four will oppose it. A. That I decline to answer.

Q. Don't you know that is so? A. No, I don't know that.

Q. What I refer to is a combination composed of J. P. Morgan & Company and those two banks, The First National of New York. (Mr. Moss is conferring with Mr. Klein.) The National City Bank of New York — there should be six — Lee, Higginson & Company of Boston and New York, Kidder, Peabody & Company of Boston and New York, and Kuhn, Loeb & Company.

Now, when one of those houses takes up a matter none of the others do oppose it. Have you ever known of them opposing?

A. That doesn't follow at all. I don't know. I am not a party to such an arrangement and therefore I don't know its actual condition. But to make such a statement as that would mean that neither one or the other company go into an independent business without the other.

Q. Exactly. And when J. P. Morgan & Company are financing Interborough and Kuhn, Loeb & Company are financing B. R. T., how can you imagine any real antagonism between those two companies? A. You must draw your own conclusions.

Q. You don't imagine any? A. I decline to make any statement of that kind.

Q. If you do know or do imagine any controversy, any real controversy between two such situations as that, I would like to have you state it. A. I will answer your facts and matters of positive knowledge on my part, but I have no positive knowledge of that kind, and I don't wish to express what my imagination might be. I will give you any facts.

Q. I have reserved some of these questions for you, Mr. Belmont, because you are neither Kuhn, Loeb & Company or J. P. Morgan & Company, nor are you in the combination — at least, so far as I have been informed — that I have mentioned; but you are a banker of many years' experience, of large experience, and you are perhaps the banking knowledge of the Interborough Company. If I were going to pick out a man who understood the banking business, in the directory, I should go to you.

Now, we have this situation: Here are several elements I want you to consider. Interborough, not at the beginning but at some time after the beginning, put itself in the hands of J. P. Morgan & Company as its financial advisor. The B. R. T. put itself in the hands of Kuhn, Loeb & Company as its financial helper and advisor. The Hudson Tube Company — Mr. McAdoo's Com-

pany — The Hudson and Manhattan Company at the beginning was financed by Mr. Morgan's house, but the job was completed by Kuhn, Loeb & Company, who I think are now the financial agents or backers of Mr. McAdoo's tunnel proposition. Remembering those facts, here comes the fact I want to put particularly before you — that, at a critical time in these negotiations a proposition was made by Mr. McAdoo's company, The Hudson and Manhattan Company, for building subways in New York — which many people carelessly thought was an entirely independent thing, and antagonistic to both B. R. T. and Interborough.

But I ask you, don't you know, or haven't you the information upon which you can state an opinion that the offer that was put in by the McAdoo Company, when it was put in was not actually put in in competition with the Interborough and the B. R. T. but was put in as a tactical step, as a part of a policy to help the movement to get the City, instead of building its independent Triborough route, to build the route that the B. R. T. and the Interborough people were interested in? A. I know nothing of the kind.

Q. Did you ever hear of anything of the kind? A. I have heard all sorts of things.

Q. Did you ever hear of anything like that? A. I have heard people express opinions quite as far from the facts.

Q. Like that? A. And a great many other.

Q. Did you have an opinion like that? A. I will not express an opinion here, Mr. Moss.

Q. Did you ever have an opinion based upon the facts that you know? A. I will not express opinions.

Q. Then I say this to you, Mr. Belmont: That the facts before this Committee thus far, and the facts which the Committee knows of, and put upon its record, indicate that while some of the City officials and many people in the City were urging the City to build an independent route, we may call it the Triborough route for lack of a more definite term, and while candidates were pledging themselves to build an independent City route which would be separate entirely from any obligations or copartnership relations with bankers, there was at that very time an understanding among financial people behind the railroads in this City by which they were to combine and by their various tactical methods

beat down the proposal of a City built independent subway and bring out of it just such a thing as did come out in the Dual Contract, where the City is a partner and where the control is in the banking houses. A. It is impossible to answer it.

Q. You can't answer that? A. I don't think anybody can.

Q. Don't you know that there was an understanding at the very beginning by which that was to be brought about? A. Why, no.

Q. Wasn't there such an understanding at the time that the private capital bill was being devised and put through, so that private capitalists could get into this game in the City of New York — wasn't there such an understanding then? A. I really don't know. There was nothing of that kind known to me.

Q. When you got a million and a half dollars for the "Mule" railroad up there in — A. Now, Mr. Moss, I will explain the conditions of that, and I won't allow you to —

Q. You must submit to cross-examination on that. A. I will submit to whatever —

Q. Now, you can't come in here and give us a statement prepared in your own way assisted by your own lawyers and not be cross-examined on it. If you take that position your statement will have to be rejected. A. In using that term you imply something.

Q. Perhaps I fell into the vernacular, and if that is your point I accept it, and if it seemed to be an imputation I apologize for it. I will put it in this form: When you accepted value, face value, of a million and a half, actually worth a great deal more, for a railroad that cost you less than \$300,000, didn't you provide a fund thereby which you did not keep all to yourself? A. Mr. Moss, your question is full of inaccuracies.

Q. Correct me, won't you? A. The record is there. That shows you that those are not the facts, and therefore in asking your question you must state facts. It is not the facts that you are stating. You are stating a supposition, but those are not the facts.

Senator Thompson.— I suggest that the question be read, and have the witness point out the inaccuracies.

The question is read by the stenographer.

Mr. Belmont.— I mean to say that the statement that I re-

ceived a million and a half, as you called it — I don't know whether that is dollars — for a railroad which cost me a less amount, you know perfectly well — Mr. Moss does when he asks that question, that is not in accordance with the record on the subject. The record was made clear to you and it was filed with you here. As to how that transaction was carried out, it wasn't a question of this City Island road at all, and there were other questions involved. And therefore I won't answer that question. That is based on a misstatement.

Q. I see what you are getting to, and I didn't see it before. The railroad did cost you less than \$300,000 — I think I have given you outside figures on that. A. I understand, but that statement involves an imputation. It was made quite clear that when that was bought while my firm bought it, it was understood by my associates and the reason why I bought it, and not as an individual. I mean to say there has been so much misconception that you mustn't repeat the misconception in your questions to me, because I have given you the record.

Q. I know, but I can't be bound by your statement. A. I have given you the record.

Q. Nor by the record. But did that railroad cost your house more than \$300,000? A. The exact figures were given you.

Senator Thompson.—\$340,000. Is that correct? A. Yes, but that question involves an admission that the payment was made for that, and —

Q. (Mr. Moss.) I am going to divide the question up so that we can't be at swords' points. Now, what you got for it was stock of the par value of a million and a half, wasn't it? A. Exactly.

Q. And the receipt which you gave indicated not only that you gave them the railroad but included the services which you had rendered? A. Mr. Moss, I am going to refer you to the record, and I decline to answer any further questions on that subject.

Q. It left, under the characterization of "Service," considerably more than a million dollars? A. I decline to answer, and refer you to the record.

Q. I know, but that is what the record shows. A. I will refer you to the record. The question is on appeal now. You have access to those, and I decline to answer any question in connection with that transaction.

Q. Then I say to you, since you decline to answer questions giving you a wide latitude of possible errors and mistakes — there remained to you under the term of that receipt over a million dollars given to you for “Services.” Now then, did you keep all of that money, or did you pay some of it to other persons? A. I refer you to the record of the court. where all that is given in detail.

Q. I don’t care anything about the record of the court — A. Evidently.

Q. — because I am dealing with you, and those are matters that the court did not dispose of. A. You are wrong. They did.

Q. Well, did you pay any portion of the money which you got, or other money representing it, to other persons? A. You will find the record in the court.

Q. Have you not said that people had a misconception of this thing — substantially, that you were not greedy and reaching out for money as some people thought you were, but that there were difficulties that you had to deal with which were not on the surface and that other people got some of that money? You said that. A. Are you trying to add to the misconception?

Q. No, sir; I am giving you an opportunity to correct any misconception there may be. A. The record of the court corrects the misconception.

Q. I don’t care anything for the record of the court for the purpose of this examination here, and I say the reason for that is that the court did not have that issue to deal with. It appeared that you had rendered services, and those services received a valuation on your part, and the court found no reason for disturbing the valuation which you made, and it took for granted your statement upon that, which was practically uncontradicted. But now I am getting underneath that. A. Your statement isn’t in accordance with the fact, Mr. Moss.

Q. I am getting underneath that, and I ask you the simple question, did you not pay, or was there not paid on account of the surplus which you received at that time, moneys to other persons that you had to pay it to for the sake of your railroad interests? A. What do you mean to imply? There were some payments made that were not disclosed in the proceedings before the court?

Q. I don’t imply anything. A. I consider that an insult.

Q. Never mind about the insults. There isn't a witness that comes here that doesn't insult me, and I am as good as any of them. Now, if you take that as an insult you will have to do it.

Senator Thompson.—Just get this straightened out. I want to say this to the witness: Now, if Mr. Moss asks a question, you can answer it, and the fact is in accordance with your answer, and not in accordance with his question; but if he asks a question and you don't answer it, you made the answer by referring to the answer, then of course it will carry an implication to the Committee. Now, answer these questions. A. If you will permit me I will explain exactly what was done.

Senator Thompson.—The Committee don't understand that. Notwithstanding the court record, we don't understand. I would like to understand, and why not tell us the facts about it? A. Have you read the court record? Has Mr. Moss read the court record?

Mr. Moss.—Yes, yes.

Mr. Belmont.—He will find there, the record refers to all those matters stated under it. He will find there the exact distribution that was made of that; and Mr. Moss has just practically said that the record didn't show.

Senator Thompson.—That doesn't make any difference to us. A. You mean, was I obliged to pay any sums to anybody that I owed them to? Now, the court record shows this: The records show there were no obligations to pay anybody. But it also shows that we made voluntary compensation to Mr. McDonald of a hundred thousand dollars for his services such as he had rendered in fact he knew nothing about it until he received it. That was disclosed in the testimony; and the reason that you asked the question is to try to make me disclose some payments to somebody, and there was nobody. We had no obligations when that amount was voted, no obligations when that amount was paid. The record was perfectly clear on the subject, and the hundred thousand dollars of stock given to Mr. McDonald was shown to have been a voluntary compensation on our part.

Q. (Mr. Moss.) Haven't you said within the last six months that you did not keep all of that money for yourself?—that in

substance? That other moneys had to be paid? A. No, sir, no. You will find no statement of that kind from me, and there is no record of anything of that kind.

Q. I didn't speak of a record; I spoke of conversation. A. Evidently the records of courts are a matter neither of interest nor belief to you.

Q. Now, have you ever said within the last six months that you didn't keep all of that money yourself, but that you paid some of it to other persons? It isn't the record of the court; there is no such thing as records of courts in the sense of making a fixed and settled fact. We often have to go behind the record of the court to find out if there were mistakes or errors. Now Mr. Belmont, when you bought that railroad you bought it, if I remember your statement correctly, because you deemed it was necessary to have a railroad in operation around which you could turn transactions that you wanted to handle. A. No, I didn't make any such statement as that.

Q. Did you have to have the railroad? A. I didn't make any such statement.

Q. Did you have to have the railroad? A. Yes, I said it was necessary.

Q. And having obtained it, you found the necessity was obviated by an act of the Legislature, so that the company could get rid of it — the company could dispose of the railroad. Isn't that right? A. I stated yes later on.

Q. The company got rid of it. Now, were there any payments made to anybody in connection with the passage of that legislation? Do you know or have you any information on that subject? A. Of course not.

Q. Don't say of course not. A. I intend to repeat "of course not."

Q. Well, all right. Did you keep all of the property or money that you received for that railroad or the proceeds thereof, or was any portion of it paid to other persons? A. There was the hundred thousand dollars of stock given to Mr. McDonald; that is all.

Senator Thompson.—How much par value of stock? A. A million and a half par value.

Q. (Mr. Moss.) Now, you have referred to the court record. Do those court records show what you did with the balance? A. I think so. I think the statement was made about it.

Q. All of the balance? I don't remember that; there must be some record I haven't seen. A. Now Mr. Moss I have told you that there was no other disposition made but that. Are you satisfied with that answer?

Q. No. A. Well then, I will answer no further then.

Q. You have just said that the court record shows what you did with the rest of it, and I have said I didn't see it. Is there any court record which shows what you did with the rest of it? A. I don't recall — that is, in that form. I will tell you now, that no other disposition was made. Do you understand?

Q. Oh, I understand. A. And I will tell you that again, perfectly distinctly, so it isn't necessary to ask. The only amounts were paid to anybody but August Belmont and Company as the firm, and of course the distribution of that so far as that is concerned, but no sums were paid to anybody outside of August Belmont and Company. Do you understand what that means?

Q. That don't answer the question whether August Belmont & Company paid some moneys out which they wouldn't have paid. A. Well, they paid no moneys out. There was nothing paid out in connection with that transaction to anybody excepting the hundred thousand dollars of stock given to Mr. McDonald, which he received, and didn't even demand — didn't know anything about until it was given to him.

Senator Thompson.— Then, when you got fourteen hundred thousand dollars of stock — have you got it yet? A. Yes. You asked whether any of that money was used in connection with the legislation.

Q. Yes. A. I told you no — any money of any kind — nothing. No, not a dollar came from me or anybody connected with me or my firm or as far as I know, the Interborough.

Senator Thompson.— Who was your lawyer in that transaction? A. I think Mr. George W. Wickersham.

Q. Who paid him? A. You mean for the services — the Interborough.

Q. How much did they pay him? A. I can't tell you. He received the regular compensation as attorney for the company.

Q. Didn't he receive a compensation on account of this matter?
A. Of course whatever compensation he or his firm received are a matter of record in the company's books.

Q. You don't remember what he got? A. For this particularly — I don't think he got anything particularly for attending to that part of it. He was paid — and his firm, for their regular services as counsel. But you mean by that that for the purposes of procuring this legislation any particular sum was paid — not that I know of.

Mr. Wickersham acted for you in the purchase of that City Island road? A. I won't be positive, but I think it was stated here before that I think it was he that drew the bill which was to provide us with the charter. I think that application was made in due course and that request was before the legislature.

Q. That is, he acted for you before the legislature? A. I don't know to what extent.

Q. Did he have charge of the matter during the purchase of the City Island road? A. His firm had charge of securing a charter for us in a perfectly open and above board way.

Q. Oh, yes, I understand. But did Mr. Wickersham attend to it personally? A. It is too long ago for me to give you the details of it. They are very easily ascertained.

Q. Just what I care to know was the extent of the service that he performed. I assume from what you say now that he attended to the transaction when you purchased the City Island road. He also attended to the transaction in reference to legislation that you desired, and he also attended to the transaction when you sold the City Island road to the Interborough. A. Yes, and he attended to that in a professional way, and I don't recall and I doubt very much if there was any special mention made of those services. There may have been, but they didn't involve anything other than the ordinary compensation for work. That is all.

Q. Now, I understand that Mr. Wickersham attended to the drawing of the resolutions, the minutes, of the Interborough directors at this time. A. In connection with that?

Q. In connection with the City Island. A. Yes. Those are all matters of record in the case.

Q. (Mr. Moss.) Well now, the bankers wouldn't have been able to handle this matter for the companies if the Wagoner Bill

hadn't gone through, would they? A. Are you speaking about the City Island?

Q. No, we have left the City Island matter now for this question: You remember the Wagoner Bill that was pending — that was in 1912, before these contracts were signed; contracts were held up for a little while, and this legislation was passed. A. What is the question?

Q. I ask you, do you remember it? A. Yes, in a general way.

Q. Do you remember any discussion, or have you any information as to any difficulty that was experienced in putting the Wagoner Bill through? A. That I don't know. I don't know that. But that expression "putting it through" — you mean by that —

Q. Having it enacted. That is the term that we generally understand. A. Your question first was apparently, could we have carried out this transaction but for the Wagoner Bill.

Q. No, I got away from that. I asked you if you remembered any difficulty in connection with that legislation. A. No, I wasn't giving that any special attention at all. I knew it was before the legislature.

Q. Now, I have read these letters of Mr. Shonts relating to the bankers and the danger of their withdrawing their offer. These were brought from the Mayor's office. And I find attached to it a memorandum apparently by the Mayor, dated May 9, 1912.

Memorandum:

"In conversation with President McAneny on the subject of speedy acceptance of the Interborough's proposition, President McAneny stated that such proposition was entirely satisfactory except with respect to the tunnel routes to Brooklyn. President McAneny stated that the B. R. T. were opposed to the Clarke St. route and wanted the Whitehall Street route.

"I told President McAneny that we had always favored the Liberty St. and that we would accept the Liberty Street route, and, therefore, leave Montague Street for the B. R. T., which seemed to dispose of that.

"McAneny then said that what stood in the way of the immediate acceptance of the Interborough offer was that they

had no definite proposition from the B. R. T., and he further stated that inasmuch as the principles of a preferential payment to the Interborough were based on the dual system of operation, unless they did trade with the B. R. T., and thereby create the dual system, they could not defend the principle of a preferential payment to the Interborough.

"I thereupon stated to Mr. McAneny that the Board of Estimate and Apportionment had voted in favor of giving all of the proposed subway lines to the B. R. T. for operation on the principle of a preferential payment without any Interborough competition, and it was, therefore, not clear to me why the principle of preferential could not be applied in a trade with the Interborough even before trading with the B. R. T.

"McAneny further stated that they were building certain subways which it was proposed to award to the B. R. T., and that if they traded with the Interborough and subsequently did not trade with the B. R. T. they would have those subways on their hands.

"In response to this I called his attention to the fact that in the Interborough's proposition it agreed to operate any and all subways built by the City, and that, therefore, if the contingency he had in mind should arise those subways could automatically come under the Interborough's present proposal for operation."

Mr. Moss.—Now, this memorandum is marked in pencil "Attach to Shonts' last letter," with the name of "Casey." Written all in pencil. This is just as it came from the files.

Mr. Belmont, the proposition in this phrase I want to read over to you again, and ask if that ever was discussed among you gentlemen either on the Executive Committee or the Board of Directors:

"McAneny then said that what stood in the way of the immediate acceptance of the Interborough offer was that they had no definite proposition from the B. R. T., and he further stated that inasmuch as the principles of a preferential payment to the Interborough were based on the dual system of

operation, unless they did trade with the B. R. T., and thereby create the dual system, they could not defend the principle of a preferential payment to the Interborough."

Was that idea ever discussed in your Executive Committee or in the Board of Directors? A. Yes; but isn't this a memorandum of conversations and statements made?

Q. This is just as I have read it — a memorandum attached evidently in the Mayor's office to this correspondence. A. During the whole progress of these negotiations there were a great many reports as to what was taking place and it has been Mr. Shonts' habit always to dictate — now I don't remember whether that particular statement came under my observation. But the question of preferential, as I recall it, was always an element that originated with the Brooklyn Rapid Transit. I think it did, although it was a matter of discussion and negotiation, it originated there. And I presume in that statement, it seems to be perfectly clear that they hadn't reached a finality in their negotiations with the Brooklyn Rapid Transit, and they didn't want to close, as he states, this with the Interborough and introduce that feature, which we were entitled to if it was introduced.

Q. I am asking you the question because this statement may have been written by Mr. Shonts. It doesn't seem to have been, but it is just possible it is an unsigned statement. It is dated May 9, 1912 — I think the date when the arrangement cumulated was May 24, 1912 — so it is pretty close.

Now, do you know any reason why a preferential should have originated with the B. R. T. rather than the Interborough? A. I really can't give you any reason for that, but that was always my impression — that it had.

Q. It may have. I couldn't say it didn't.

Senator Thompson.— Is that the court record you have there?

A. No, this is simply a book that was got up in 1904, and I thought that if you were going to ask me any further questions about the beginning of the subway, this gives the whole history. That is all.

Mr. Moss.— That is a beautiful book. I have seen it, Mr. Belmont.

Senator Thompson.—Don't let me get you away from what you were talking about at that time. A. This question moved backwards and forwards so that I couldn't put my finger on anything without reference to the minutes of the meetings.

Q. (Mr. Moss.) Mr. Quackenbush thinks this is Mr. Shonts' memorandum. A. Well, it sounds very much like it. In order to make a record of conversations, there was a quantity of those, and it may have been conveyed to the board. I think it was.

Q. We will take the opinion of Mr. Quackenbush as the indication for the present at any rate.

Now, it has seemed to us, Mr. Belmont, that in the division of territory the B. R. T. got much the better of it. And I am wondering why the B. R. T. should have been insisting upon a preferential—I wondered what argument you had ever heard in favor of a preferential as coming from the B. R. T. side. A. Well, I don't know. That is a number of years ago, of course. But it was always in my mind that that preference idea came from that side of the river.

Q. (By Mr. Shuster.) It is your understanding, Mr. Belmont, that the B. R. T. could have a preferential any wise similar to that Interborough preferential? A. The principle of it—I mean the idea of the preferential payment as it developed, as I recollect it—

Q. As a matter of fact, the theory on which your preferential was allowed to the Interborough was the fact that they had an existing operation from which there was an income? A. With the Interborough? Yes.

Q. And the B. R. T. did not have any subways that it was operating belonging to the City—therefore it had no right. A. But they were to have, under the new arrangement.

Q. But it was under the Tri-borough system? A. Yes.

Q. And taken under the Tri-borough system, they would have had some part of the then existing subways? A. I don't know that far. But of course when it came to making that preferential I am not confusing our preferential with it. You mean the preferential payment that was to be paid to our company before we divided with the City?

Q. Yes. A. Because that was an established business that would have to be based upon something. It couldn't be thrown into a general chance of a very largely extended system.

Q. So that you couldn't be correct then — that the suggestion of the preferential would come from the B. R. T. No, no.

Q. You probably had in mind — A. I think I had something else in mind. If you will correct that statement —

Mr. Quackenbush.—Have you got the B. R. T. as first over here, Mr. Schuster, in March, 1912?

Mr. Schuster.—We have that of 1911 over here.

Senator Thompson.—We have got all that over. We took them yesterday — Colonel Williams brought them over and put them in the record.

Mr. Shuster.—They would have no ground upon which to contend for a preferential payment.

Mr. Quackenbush.—As I recollect it, they figured that when they put their elevated earnings in with the new subway earnings, that they should have what was equivalent to their existing profits on their elevated earnings first set aside, and in that way the idea of a preferential originated with them.

Mr. Schuster.—That is your idea?

Mr. Quackenbush.—Yes.

Senator Thompson.—On what theory did they get all those little favors? They got an amortization fund on the Centre Street Loop that amounted to a million or so.

Mr. Quackenbush.—Senator, now you are getting away from the contribution on the accuracy of the thing that I wanted to make. I can't undertake at this moment to explain all the negotiations of the B. R. T., because in the first place I haven't a knowledge about them. But this discussion here I did know about, and my recollection — and I wanted to verify it by looking at their offer — is that the first suggestion of financial plan which subsequently had applied to it the name preferential came in the first general offer of the B. R. T. in March, 1911. And that idea was,

as I have just stated, that they were going to pool the earnings from their existing elevated railroads with the earnings from the new subways and that because they would have contributed that earning power they wanted that first set aside and maintained so that the City and they would share in any surplus earning power of the elevated lines plus the earning power of the new subway. That thought started the suggestion of Mr. Shonts' memorandum. Mr. McAneny's idea of May, 1912, was an elaboration of that same thought.

Mr. Schuster.— Mr. Belmont's recollection was correct.

Senator Thompson.— Of course they got some things there that you didn't contemplate.

Mr. Quackenbush.— I only wanted to get at the point as to where that thing originated, and that is my recollection as to where that originated.

Mr. Belmont.— I would have to refresh my memory. But suffice it to say that the beginning of any moves from our original propositions that went backwards and forwards and changed and rejected and so forth, that this origin of the "new" move, as I recall it, came from the B. R. T.

If you want me to answer about it I would have to refresh myself because it is too long ago.

Mr. Moss.— Now then, before there was any legislation, it would have been necessary for the City to build its own subways, isn't that your understanding of it? It took legislation to cut loose. A. Yes.

Q. And the first bill was called the Private Capital Bill; then there was some little thing I have forgotten just what it was, that came into it. A. You mean the Elsburg Bill?

Q. Then came the Wagoner Bill, which someone discovered was necessary after the City had practically agreed.

Senator Thompson.— The primary purpose was, that the matter was submitted to Justice Blackmore and he couldn't decide on it.

Mr. Moss.—He held his decision until the Wagoner Bill was passed. So that in the first place it required legislation. Now, after legislation had been obtained which would enable private capital to come in, the next question was, supposing that the city was inclined to build the subway whether it had the capital or the debt limit sufficient to issue the bonds for it. Do you remember the addresses of Mayor Gaynor and Comptroller Prendergast in the campaign of 1909, and of the other candidates too, where the ability of the City to do this work was affirmed loudly, affirmed and promises were made by these candidates upon the strength that the City was able and would build. You remember that? A. (Mr. Belmont.) Yes, I remember in a general way.

Q. Do you remember that in the latter part of the year 1909, the latter part of the McClellan Administration, it was reported very generally in the newspapers that the administration was using up the debt limit by large expenditures? A. Yes.

Q. I will introduce some newspaper articles on that subject—one or two of them as examples, before we close this session. Did you make any inquiries yourself in order to have an opinion whether it was true or not that the debt limit was thus being dissipated? A. No, no private inquiries of my own. No, I didn't examine it accurately.

Q. There were some very heavy expenditures, I believe. From what I have looked at the record I find some very heavy expenditures in the latter part of the McClellan Administration. But it wasn't very long before an announcement was made by Comptroller Metz that there was a large debt limit. It wasn't very long before a decision came out through the evidence before General Tracy, showing that there was a lot of money in sight, and then there were the additions from year to year by the natural increase, and then the extraordinary additions by the increase of the assessed valuation under Mayor Gaynor. Of course you have a general recollection of all these things. A. Yes, but constant controversy at which they arrived at their conclusions—

Q. And when these gentlemen asserted that there were large debt limits, and that they were creating large debt limits, and that there were going to be large debt limits, the contrary was asserted on the other side, wasn't it? A. I believe so.

Q. Didn't the people who were interested in and associated with the Interborough Company join generally in the claim that there was not the debt limit that was claimed? A. I can't answer that.

Q. If there had been a sufficient debt limit in sight, accepted as a fact by the City authorities, then it would have been difficult for men who had pledged themselves to build by the City, it would be difficult for them to avoid that promise, wouldn't it? A. I presume so, yes.

Q. Now, don't you know that there was a strong and a steady effort made to cut down the apparent debt limit so that those who were urging the City officials to construct the subway would be met with the proposition, "The City hasn't funds to do it? A. I couldn't answer you that.

Q. I ask you the fact — Wasn't that discussed in meetings? A. People when they are advancing arguments always draw upon the most favorable interpretation they can give to support their own side.

Q. To be sure. A. And to go into the merits of that discussion I couldn't assist you.

Q. But wasn't there a settled policy in the Interborough Company, of which you had knowledge, to depreciate the debt limit of the City? A. No, I don't know anything about that.

Q. Wasn't it your desire that there should be an arrangement made in line with your propositions that the City should help the company and the company help the City? A. No, that grew by itself through the impossibilities of the various propositions that were made. Mr. Moss, the development of a thing of that kind is impossible to explain.

Q. I presume that is so, but I have a definite line. I know what questions I am going to ask you, and I am going to follow them right along and you will see. If the subways were built by the City alone, there would not be the profitable field for the banker that turned out in the Dual System, would there? A. I don't think that follows.

Q. Wait a minute. If the City had constructed and built these subways and had raised the money to do it, they would have issued their bonds and those bonds would have been marketed. That is so, isn't it? A. Yes, sir.

Q. And those bonds would have had to sell at a hundred, wouldn't they? A. They would have had to sell them to the public.

Q. They would have to be offered at a hundred, and City bonds seldom carry, they don't carry, more than four and a half per cent. interest, do they? A. It depends on — you mean the limit of the rate of interest — they didn't used to carry that. That was only done under stress.

Q. But if the City had decided to build the subway itself, it then would have had to issue bonds, and the bankers would have had to subscribe for them at a hundred or over. Isn't that so? A. They couldn't have sold them unless they had.

Q. Exactly. They would have been withdrawn. And four and one-half per cent. would have been a high rate of interest. Now, under the present arrangement, under this dual arrangement, where the company has issued the bonds, the bankers have taken them at 93½. It has been so arranged that the moneys were taken and deposited with the bankers, so that they have had heavy balances upon which they have received interest. It has been so arranged that the bankers have had the benefit of syndicating and marketing, and all of the benefit of the bonds rise to 110, that is mentioned in the agreement — or any other figures. And in addition to that, the transaction being with the company as a company, the bankers by this method have secured a hold, a control, of the railroads that they would not have had if the City had constructed them. Isn't that so? A. Why, you are stating opinions, Mr. Moss, that would imply that this whole transaction was a question of the bankers — that they choose a course that they preferred. That isn't the fact. You know that as well as I do.

Q. No, I don't know it. A. Well, then you ought to. Because the development of the subways on the part of the City would have been an impossibility under those circumstances. The City would have probably impaired its credit very seriously if it had been obliged to issue at that time the equivalent of what it cost to build these subways. It couldn't have sold its securities without increasing the rates of interest, as you say. It would have affected all the securities that it had sold in the past, and in fact it couldn't have sold them at all, probably. And it is the City that was ob-

liged to seek another method. The City acted in its own interest.

Q. Mr. Belmont, the City's credit is behind this proposition, and if the City had built these subways on the Tri-Borough or any other plan it wouldn't have been compelled to build this whole outlying region with comparatively small trunk lines and immense feeders that are going to congest the trunk lines sooner or later. It wouldn't have been compelled to do that. It could have built as it went along, just as Mayor Gaynor said it wouldn't do.

Now I come back to that proposition that you made. Isn't this really a bankers' proposition? Mr. Prendergast said yes, the City practically had to take the terms that the bankers made. A. If it wanted to build subways, because it was under —

Q. It practically, on this dual business, it had to take the terms that the bankers made. As Mr. Morgan the other day said, "When the Interborough joined hands with J. P. Morgan and Company, it made an invincible proposition." It had to go through.

Now, I have traced the way, I think, by my suggestions, along the two lines; I have shown you that the City would have had to build but for the legislation and but for the depreciation of the debt limit. The legislation and depreciation of the debt limit were the truer faults credited the situation where the City was apparently forced into a combination with the bankers. But the result of it was a bankers' proposition — the bankers on the inside of it and the bankers in control. A. Mr. Moss, if you want to build a house and you go to an architect and a contractor to build your house, you call that an architect's or a contractor's proposition. You have to pay the architect what he requires, and the contractor what he requires.

Q. It is not a precise situation, because the architectural trade is open and the banker's trade is closed. A. In essence it is exactly the same.

Q. No, there are hundreds and thousands of good architects practicing, without any combinations as far as I know, and without any Architects' Trust. But it is different in the banking situation. A. It depends upon the size of the building.

Q. The architect doesn't supply the funds for the building — the banker does.

Now, I have referred, Mr. Belmont, I have referred to a bankers' combination, and I do it not simply upon hearsay but, for lack of something more in order to save time, I do it on the report of the Pujo Committee, which I have in my hand here—the findings of the Pujo Committee, and based upon the evidence which it took. And that committee has found that this banking power is centered in those six concerns that I have mentioned, in close association. And it has traced out their associations, all of which you will find in their report. And by reference to that report I find that the combination of Morgan & Company, and Kuhn, Loeb & Company, practically controlled the public utility of this city, so far as bankers can do it; and you can see what they do in the Interborough and the B. R. T. situation. And I named these, if I am wrong it can be corrected: The American Telegraph and Telephone Company—I am only speaking now of public utilities—Morgan, and Kuhn, Loeb & Company, The Hudson and Manhattan Tubes—financed originally by Morgan, continued and I presume now by Kuhn, Loeb, Consolidated Gas Company, The Morgan Syndicate. And in that Consolidated Gas Company you find it slipping over to the National City Bank, where there is a strong Standard Oil and Rockefeller control; B. R. T., Kuhn, Loeb & Co., Interborough, J. P. Morgan & Company. Now, taking Mr. Morgan's testimony, that when he joined hands with Interborough it became invincible, taking the fact that Morgan & Company and Kuhn, Loeb & Co., who are the backers of the B. R. T., are in close association; taking into consideration that so close was the arrangement in B. R. T. that they took their money and became liable for interest for it, on forty million dollars, from Kuhn, Loeb & Co., before the contracts were arrived at; it is upon that basis that I asked you the question, Whether this was not a bankers' proposition—this putting of the Dual Subway contracts through. A. I don't consider it in that light. Of course the City wanted to build, and it was necessary for them to build a system, and they couldn't. Mr. Moss, you have got to have information; bankers are not people that put their money in anything and keep it there. They can't do it.

Q. Of course not. A. They have got to have something which they can dispose of, and it has got to be based upon a sound busi-

ness principle. For investment, you can't have a temporary, a merely temporary, prospect. You have got to have something permanent. So that this matter of dealing with the subways, was based upon what would make a lasting and sound business enterprise. It is a banker's business to see that, and that was the controlling element in it, and a sound business enterprise was established.

Q. But Mr. Belmont, I have just read you the letters written by Mr. Shonts to the Mayor containing the threat of J. P. Morgan & Company to withdraw if the Interborough business wasn't put through. Now, there was notice, Mr. Belmont, there was notice to the City authorities — give them what is due to them — there was notice to the City authorities that if they didn't do business with the Interborough Company, J. P. Morgan & Company would withdraw — and that meant the withdrawal from the field of the combination, because on the testimony which we have had, the members of the combination do not fight each other. And I am wondering what it was that Mayor Gaynor referred to in his "damnable rascality" letter, Mr. Chairman, when he said "The City is being overreached by a few financiers of great ability." Was it a cry of distress, after all, of a man who had made promises and knew he had made promises, to the electorate of the City, and knew he had made promises, to the electorate of the City, and knew of the threats, and knew of the situation, and knew what the bankers would do if he didn't conform to their wishes. I don't know what that clause meant, but it looks very significant. And if it were true that Mr. Prendergast said to Mr. Mayor, "I expect to have Mr. Miller's testimony on this subject, there are such powerful influences behind the Interborough," what was it he meant? Now, the combination, the syndicate which backed up the B. R. T., according to the testimony that came in yesterday, was the Central Trust Company, Kuhn, Loeb & Company, Kidder Peabody & Company, National Shawmut Bank, Boston Safe Deposit and Trust Company, Merchants National Bank, Old Colony Trust Company.

Mr. Belmont.— Mr. Moss, would you like to have me give you in very simple words the conditions about Morgan & Company

and the Interborough? That will perhaps make it a little clearer to you. You can understand that the Interborough couldn't go into a negotiation to build partly with private capital; it has its securities turned into money, and the City without having knowledge where the company had all those securities. It couldn't do that, and so it went to the only firm that had resources large enough to insure anything like so enormous a sum as was required. That was the condition; and so they went to Morgan and Morgan said Yes, naturally we will stand ready to furnish the necessary capital if the transaction is satisfactory to us. That is, in a general way. Now, there was no absolute obligation on the part of the Interborough that they were to avail of that offer. They couldn't avail of it unless they get the transaction through. During all that time the terms, the idea of how to carry out a general scheme for the building of subways went on, subject to negotiations; terms were changed, so much so that concession after concession was made by the Interborough in the early negotiations, until really it didn't look as if it was such a very sound transaction for a banking house to take securities and dispose of them. And yet the option practically was left open. In other words, the word of Mr. Morgan was considered sufficient — and it was sufficient, just as good as if it had been a matter of contract. And I presume, and as I remember, that they talked to the end of their patience on the subject, that this couldn't be considered an indefinite option that could be handled at will, and if it didn't go through that then they could come back with a new proposition. I mean to say that the latitude given to the Interborough in its negotiations was very great, and then if you will recall these negotiations finally failed, and the Interborough withdrew. Mr. Shonts told you. We were unwilling to go on negotiating any more, and being put in a false position before the public, that we were offering propositions that were unprofitable for the City, were constantly being rejected, had been made the subject of negotiation, as we thought, and had been agreed to. And so then it was taken up by other parties altogether, Mr. Loeb and the Pennsylvania Road, and those varied as they went along. And yet the practical option of the Interborough on that large sum remained.

Those were the conditions, and when this contract was carried through the details of that negotiation the Interborough had not so very much to do with it. It finally gave its consent and agreed to it.

Q. But what the Interborough gave up the B. R. T. got in the division of things, and the Interborough was backed by Morgan and the B. R. T. was backed by Kuhn, Loeb & Company. And those were the two most powerful factors in the combination, whichever way it went, the near combination controlled.

I agree with everything said, only that it was a bankers' proposition, and they controlled the City.

Session suspended until 2:30.

AFTERNOON SESSION.

The Committee came to order at 2:30 P. M., Senator Lawson presiding.

The witness, AUGUST BELMONT resumed the stand.

Mr. Moss.—I promised to introduce two or three newspaper articles of the latter part of 1909, showing the discussions about the debt limit. Here are two or three of them as examples: The World, October 23rd, 1909; American, December 9th, 1909; American, December 11th, 1909.

Mr. Belmont.—Are they articles or editorials?

Mr. Moss.—They are articles — news articles.

Mr. Belmont.—Not signed?

Mr. Moss.—No, just reading matter. One of them is a quotation from the speech of Mr. Gaynor, which I will read:

(New York American, Dec. 9, 1909. W. J. Gaynor's speech before "Southern Society.")

(Reads.)

"He declared that, with the approval of the constitutional amendment eliminating bonds issued for the construction of

subways the city was free from the financial dictation of any group of capitalists, and, having the whip hand at last, intended to use it to its own advantage.

"He added that corporations constructing new subways, if private capital were to be used, must make up their minds to 'take the lean with the fat,' and that they would not be allowed to build the profitable lines in Manhattan leaving the City to 'build the fag ends in Brooklyn, Queens or the remote sections of the Bronx.'

"The city is now in a position to build them, if the present outgoing government does not with its last breath pass every proposed scheme before it," he said. "The fine names behind one scheme to purchase land in the name of charity should stamp it with distrust."

(New York World, Oct. 23rd, 1909. Page 10.) \$100,000,000 for new subways.

"N. Y. City has a debt margin of \$100,000,000 which it may devote to subways or any other improvements the Board of Estimate may elect.

"This was judicially established yesterday by the decision of the Court of Appeals on the Report of Gen. Benj. F. Tracy, the referee appointed over a year ago to ascertain the debt limit. The court lopped off \$51,446,066 from the debt margin as found by Gen. Tracy. Gen. Tracy found that on June 30, 1908, the city had a debt margin of \$106,205,714.66 and with the reduction made by the higher court \$54,759,646 was left.

"Since Gen. Tracy's figures were prepared, nearly \$50,000,000 has been added to the debt margin by the new tax levy, so that according to the statement of Comptroller Metz last night the city has at present an unused borrowing capacity of \$100,000,000 in round figures.

"This lifts the embargo from the subway projects and other city improvements which have been held up for two years pending official determination of the City's borrowing capacity. The Board of Estimate is now at liberty to au-

thorize the awarding of the contracts for the Fourth Avenue subway, which were held up by injunction in the case decided

“ The political effect of the decision may be far-reaching. It was suggested last night that Tammany in control of the Board of Estimate may steal a march on its political opponents by voting out the Fourth Avenue subway project in the face of an election and thus make a ten strike with Brooklyn voters.

“ The decision establishes the city's debt limit for the first time in years. Heretofore every city expert has differed about it. A year ago, fearing the debt limit would be exceeded Comptroller Metz stopped certifying the new contracts, and announced he would only certify contracts for absolutely necessary improvements until he got a decision of the higher courts. The decision yesterday was a knockout for his view as to the debt limit. At the time the matter was referred to Gen. Tracy, Metz contended that the city had a margin of about \$1,000,000.

“ Comptroller Metz himself was understood to be behind the injunction holding up the Fourth Avenue subway contracts. Jefferson M. Levy, David Meyer and the Fleischman Realty Company got the injunction on the ground that if the contracts were awarded the debt limit would be exceeded. Gen. Tracy, as referee held hearings covering a period of months, and finally reported that the debt limit was \$106,205,714 on June 30 of last year.

“ The court reverses Gen. Tracy's finding on two important questions in dispute. The court reverses him in holding that all contracts must be charged against the debt limit as soon as they are certified to and registered in the Comptroller's office, and not as the work is completed from time to time. Gen. Tracy held that contracts did not become a charge against the debt limit except for the amount of the work done.

“ The second point on which Gen. Tracy is overruled is that relating to the inclusion in the debt limit of the city's securities which it owns itself and holds in the sinking fund, to redeem maturing obligations later on. The court holds that

these securities must be included in the computation of the debt limit.

"The result of the court's findings is that \$54,400,000 of city contracts, which are outstanding, must be included in the computation of the debt limit. This follows the practice of Comptroller Metz and to that extent is a vindication of the comptroller.

" 'As a result of the decision,' said Metz, 'I shall leave my successor a borrowing capacity of \$100,000,000 in round figures. It may be a few millions more than that. There are two things which the city badly needs — schools and subways. The Fourth Avenue subway may be a good thing if we settle all the questions relating to easements so that the city shall not be stung for several millions of dollars for damages.' "

(New York American, Dec. 11, 1909, page 3.)

"City Will Have no Money for Subways When McClellan Goes."

"John Purroy Mitchell, president elect of the Borough of Manhattan, and who will be a member of the next Board of Estimate and Apportionment, yesterday saw this done at a meeting of that body:

"Fifteen million dollars voted for the water tunnel in five minutes as the climax of the McClellan Ashokan dam scandal.

"Appropriations involving an outlay of at least \$25,000,000 and possibly \$50,000,000 jammed through in the face of great opposition.

"More than 200 men forced to retire to the rear of the room where they had gathered to oppose the plan regarding the Mayor's \$200,000,000 Catskill water scheme.

"City debt Jan. 1, 1904, when McClellan took

office \$334,266,745

"City debt Dec. 1, 1909 705,735,985 .

"Estimated debt when McClellan retires . . . 785,000,000

"Increase in city debt by McClellan 430,733,255

"Mayor McClellan is to end his second administration as

he began his first, six years ago, with apparent disregard for the city debt and consequent burdens upon taxpayers and the next administration; besides obliterating all available sums, which were to have been used for new subways.

"He is the head of the Board of Estimate and the Sinking Fund Commission. The City's money is being spent with a lavishness and extravagance which astonishes even the older experts, who are accustomed to unusual liberality by the outgoing administration.

"During the last month the McClellan administration has practically obliterated the debt limit of \$85,000,000 fixed by the Court of Appeals in passing upon the finding of General Tracy, referee appointed to fix definitely the city's borrowing capacity.

"More than a score of schemes averaging between two and three millions each have been put through the Board of Estimate, and the aldermen are meeting semi-weekly to approve authorization of corporate stock adopted by the Board of Estimate.

"According to uncontradicted reports, the main reason for this extravagance is to leave the next administration helpless to build subways. At the rate the administration is going it will leave less than \$5,000,000 of the present debt limit available for the next administration. The margin is already reduced to \$15,000,000 according to the Comptroller's figures, and to much less than this by other figures. The balance will be exhausted practically, by plans now before the Board of Estimate to be passed on before January 1.

"Comptroller Metz would not discuss Mayor elect Gaynor's letter of warning against further extravagance. He appeared amazed because Mr. Gaynor's letter was published before he received it. He will send his reply today.

"While the constitutional amendment releasing bonds issued for subway and dock improvements found to be self-sustaining, will go into effect January 1, enemies of new subways are questioning the meaning of the amendment on self-sustaining.

"As the present subway is self-sustaining, the \$45,00,000

issued for its construction will be deducted by the Comptroller's experts at once. This sum alone is certain as there are many docks not self-sustaining.

"One of the first questions Gaynor and Prendergast must determine is whether this amendment refers to 'docks as a whole,' or whether a distinction may be made between docks which pay a revenue and those which do not.

"Scores of docks are operated at a loss, and the question has been raised that under the amendment adopted all bonds issued for docks must remain in the debt limit. Others say all profitable docks must be taken out, and that thus about \$100,000,000 will be released.

"Even if the \$100,000,000 is released it hardly will enable the city to go on with the Tri-borough Subway with its own capital, as the estimated cost is \$85,000,000 which would leave only \$15,000,000 for new schools, police stations, fire houses, and other improvements.

"According to Comptroller Metz, at the Board of Estimate yesterday, the City's borrowing capacity Nov. 1 was \$69,000,000. Since that more than \$50,000,000 has been authorized and the aldermen have confirmed many of the issues. In addition the Comptroller has at least \$10,000,000 involved in various plans, on which he will report favorably before January 1.

"Allan Robinson, in opposing the purchase of a seaside park and convalescent hospital before the board yesterday noted the manner in which the debt limit was dwindling. His figures were based upon figures from Lawson Purdy, president of McClellan's Board of Taxes and Assessments.

"Mr. Robinson shows, in addition to the amounts authorized, those under consideration. Here are the figures.

"Authorization since November 1:

Contracts certified about.....	\$7,000,000.00
New Municipal Subway.....	7,500,000.00
Fourth Avenue Subway.....	16,000,000.00
Charitable purposes	2,250,000.00
Seaview Hospital	1,350,000.00
School Building about	7,327,000.00

Reimbursements, street and park opening fund...	6,160,000.00
Manhattan Bridge Approach awards.....	2,000,000.00
Children's Court	150,000.00
Zoological Park	115,000.00
Van Courtlandt	144,000.00
66th St. transverse road repairs.....	40,000.00
Change of grade — damage commission.....	18,850.00
Frank E. Gore and Daniel Henman, claims on Manhattan Bridge work	41,682.62
Improvement of property in E. 101st St.....	21,000.00
Storehouse, Dept. of Sewers, Brooklyn.....	12,500.00

Total authorized \$50,130,030.62

“ Authorization recommended to the board yesterday:

Drainage and sewerage, Bronx.....	\$15,000.00
New Bridge — Central Park	25,000.00
Department of education, Central Depository....	600,000.00
Funds for street and park opening.....	125,656.60
New headquarters — Board of Health.....	850,000.00
Rockaway Seaside Park	1,500,000.00

Total recommended \$3,115,636.60

“ There are still in the hands of the Comptroller for report the following requests for corporate stock issues:

Fire protection — school buildings	\$1,000,000.00
New schoolhouse, Clarkson & W. Houston Sts.....	130,000.00
Completion new Bellevue pavilions.....	2,228,104.73
New refuse distructors, Richmond	9,000.00
Bldg. on Hart's Island.....	750,000.00
Acquiring property in Brooklyn.....	15,436.60
Improving new Bellevue grounds.....	25,000.00
Equipment of school buildings.....	2,040,900.00
Electrical plant Randall's & Black. Island.....	230,000.00
New Bldg. — fire alarm telegraph — Bronx.....	100,000.00
County Jail Wall — Richmond	96,000.00

Total \$6,675,241.33

“ Request — pending, but not made:

Department of Corrections	\$2,200,000.00
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Grand Total.

Corporate stock issues authorized.....	\$50,120,032.62
Issues to be recommended.....	3,115,636.60
In hands of Comptroller for report.....	6,675,241.33
Requests pending	2,200,000.00
<hr/>	
Total	\$62,110,910.55

“Comptroller Metz sought to explain these figures by saying they did not include amounts authorized for the Board of Water Supply, which do not apply to the debt limit. His statements were off-set, however, by the fact that Mr. Robinson estimated the debt limit at \$78,000,000 on November 1, while the Comptroller declared flatly that it was \$69,000,000. In submitting this statement Mr. Robinson said, ‘If the issues recommended by the Comptroller are made and the requests in his hands and pending, granted the City’s borrowing capacity January 1 on the basis that it was \$70,000,000 November 1 will be \$7,884,089.45. On the basis that it was \$60,000,000 the limit will not only have been wiped out, but will have been exceeded by \$2,110,910.55.’

“According to figures obtained at the finance department yesterday the actual debt limit is less than \$30,000,000 with new authorizations and contracts to be submitted within the next few days to bring it down to \$15,000,000. Meanwhile the board continued its appropriations up to the last moment and fixed hearings on other expensive propositions for next week and December 23 to more than exhaust the balance.”

(New York Press, December 11, 1909.)

“City’s Debt Limit is Narrowing Fast.”

“There was another raid on the borrowing power of the city by the outgoing Board of Estimate yesterday. Since Tammany Hall and its Democratic allies discovered on November 1 by reports from those whose duty it is to keep their fingers on the pulse of the voters that they were to be wiped out in the Municipal election, the Board of Estimate has authorized in round figures the issuance of \$25,000,000 of appropriate stock. Of that amount \$10,219,116.02 was au-

thorized between November 1 and December 4 inclusive. Of this \$10,159,116.02 was for various municipal purposes and \$60,000 for water. Not a dollar was authorized for rapid transit or for public libraries.

" In the meeting of the board yesterday there were further authorizations of corporate stock aggregating \$14,657,017.80. Of that amount \$13,036,381.20 was authorized by unanimous vote for six sections of the Fourth Avenue subway. The other authorizations were \$600,000 for a central supply depository for the Department of Education, \$855,000 for a site for the Health and Tenement House Departments, \$110,000 for the street and park openings fund, \$25,000 for a bridge in Central Park, \$15,636.80 for the acquisition of real estate in Front Street, Brooklyn, and \$15,000 for drainage and sewerage plants in the Bronx. Of the \$14,657,017.80, \$1,465,636 requires the approval of the Board of Aldermen before the authorization will be of full effect.

" The effort of the outgoing Board of Estimate seems to be to vote away as much of the city's credit as it can, and thus place the incoming administration in a position in which it will not have the borrowing leeway needed to carry out its pledges relating to rapid transit and other large projects demanded by the voters. It is admitted millions of dollars in those authorizations do not count yet against the debt limit. They will do so, however, when approved by the Board of Aldermen and certified by the Comptroller.

" The Bureau of Municipal Research has been keeping tabs on the Board of Estimate. Figures compiled by it show that from January 1 to July 30, inclusive, the Board authorized \$63,301,093.92 of corporate stock.

" Of that \$19,950,192.96 was for various municipal purposes; \$120,000 for rapid transit, \$43,118,892.96 for water, and \$252,000 for public library purposes. From July 1 to October 31, inclusive, the board authorized \$15,920,908.79 of corporate stock, of which \$6,867,953.08 was for various municipal purposes, \$5,595,000 for rapid transit and \$3,457,986.70 for water. The aggregate for the period from Jan. 1 to December 4 is \$89,641,117.72. Of that \$36,977,268.06

was voted for various municipal purposes, \$5,775,000 for rapid transit, \$6,636,849.66 for water and \$252,000 for public library purposes. With the \$14,657,017.80 authorized at the meeting yesterday the total authorizations of capital stock to date this year are \$104,298,135.32.

"No attention was paid by Mayor McClellan, Comptroller Metz and other members of the board yesterday to the known disapproval of Mayor-elect Gaynor and his associates in the incoming administration of the big authorizations now being made by officials about to go out. Comptroller Metz was asked whether he had done anything about the Gaynor letter asking for information on the debt limit and the corporate stock authorizations.

"I have not yet received Judge Gaynor's letter' Metz said 'This is evidently one of the cases where the press received a communication before it had been received by the person to whom it was addressed.'

"The question of the close approach to the debt limit by the huge authorizations was brought up, however, by Allan Robinson of the Allied Real Estate Interest. When opposing the purchase of Rockaway Park property for a tuberculosis hospital, Robinson said the debt limit margin is too narrow to justify such an expenditure. He said that on October 24th last, Comptroller Metz said the margin was \$90,000,

"And on November 1, according to President Purdy, it was between \$60,000,000 and \$70,000,000' Robinson continued, 'Since November 1 this board has obligated the City to spend \$50,120,032.12 and \$3,113,613.36 is on the calendar to-day. There is still in the hands of the Comptroller an aggregate of proposals which foot up to about \$6,000,000, making a total, if acted upon favorably, to January 1, of \$62,110,910.55. The city may find itself with a borrowing margin of only \$9,000,000 by January 1.

"You don't take into account,' Metz said, 'that those amounts do not become chargeable against the city debt limit until they have been passed upon by the Board of Aldermen or certified by the Comptroller, or, where they have been

passed, that same will not become a charge against the debt limit for years.'

'And you forget,' Borough President Coler said to Metz, 'that the Court of Appeals has declared that contracts do become chargeable against the debt limit in full as soon as they are certified.'

" 'Well,' Mayor McClellan said, 'there will be an increase of margin after the first of the year as a result of the adoption of the constitutional amendment.'

" 'Yes, the debt limit margin will be increased some \$110,000,000 by that,' Metz said.

"After that discussion, the Rockaway Park acquisition proposition failed to get the requisite number of votes. The plan to establish a big tuberculosis hospital on the beach was opposed by many Rockaway Beach folk and by Borough President Gresser of Queens. They said it is not wanted and would be a great detriment.

"The Bureau of Municipal Research expresses opinion the borrowing margin of the new administration will not be less than \$65,000,000. The bureau says that more important than authorizations is the actual execution and registration of contracts which are added to the debt. Since October 31, the Comptroller has registered \$2,153,031. If the borrowing margin on October 31 was approximately \$65,000,000, the bureau holds the contracts registered since that time reduce it to \$63,000,000. The authorization of \$33,000,000 since October 31 will have to be met sometime, but they are not immediate liabilities. Unless rescinded, a cautious Board of Estimate would not count on more than \$30,000,000 borrowing margin on January 1 next.

" 'Those figures do not include' the bureau adds, 'approximately \$130,000,000 which will become available for subway and dock purposes, provided the constitutional amendment was approved.'

"The Board approved the Southern Boulevard and Whitlock Avenue rapid transit route in the Bronx, proposed by the P. S. C. It discussed the South Shore traction franchise but could take no action because of Justice Seabury's

injunction. The question was laid over until December 23d. A representative of the Citizens' Union said the proposed modifications would deduct \$267,000 from the special franchise taxes.

"The board approved the big water tunnel plan of the Board of Water Supply for Manhattan and the Bronx and the changes affecting the other boroughs. Decision was reached to back the P. S. C. in its fight against the Second Avenue Railway electrifying its practically abandoned tracks in Worth Street. Coler blocked a resolution to permit street cleaning commissioner Edwards to advertise for bids for snow removal 'by the area and also by the load.'"

Mr. Moss.—Statements of fact of course are subject to being established by proof.

We were speaking of the syndicate that took the bonds of the B. R. T., the names of which I have read off. By referring to the Directory of Directors, I find that in the directorate of the Central Trust Company, James C. Brady, whom I suppose you may know, is a brother of Anthony Brady, and James N. Wallace, both directors of the B. R. T. or subordinates thereof; Jacob H. Schiff, of Kuhn, Loeb & Co., and William A. Read, director of the Interborough. The National Shawmut Bank and the Old Colony Trust Company, according to the report of the Pujo committee, are associated with Lee, Higginson & Company, and Kidder, Peabody & Company, who are in the six that were named as controllers of the financial situation. While I have this report in my hands I want to quote a little from it. It is entitled, "Report of the Committee appointed pursuant to House resolutions 429 and 504 to investigate the concentration of control of money and credit." Dated February 18th, 1913.

At page 56, section entitled Section 4 — Agents of Concentration:

"It is a fair deduction from the testimony that the most active agents in forwarding and bringing about the concentration of control of money and credit through one or another of the processes above described have been and are—

J. P. Morgan & Co.

First National Bank of New York.

National City Bank of New York.

Lee, Higginson & Co., of Boston and New York.

Kidder, Peabody & Co., of Boston and New York.

Kuhn, Loeb & Co.

“Just ten lines (in report of Pujo Committee) which compose the near syndicate of the Interborough, and Kuhn, Loeb & Company, who are the head of the financing of the B. R. T.”

On page 79 of this report, under the section entitled, “Kuhn, Loeb & Company,” is this statement:

“Affiliations with Pennsylvania Railroad.—From 1907 to 1912 the firm purchased alone from this company four security issues, aggregating \$75,000,000, and in conjunction with other bankers, one issue of \$40,000,000 and three issues of a subsidiary, the Pittsburg, Cincinnati, Chicago & St. Louis Railway, aggregating \$13,000,000. In 1905, associated with J. P. Morgan & Co., it purchased an issue of \$100,000,000, and from 1899 to 1905, in association with Speyer & Co., nine issues, aggregating \$126,000,000.

On page 83, referring to the combination of Morgan & Company, First National Bank and National City Bank, is this statement:

“Second: In 1910 Mr. Morgan, in conjunction with both Mr. Baker, his long-time associate, and Mr. Stillman, head of the National City Bank, purchased from Mr. Ryan and the Harriman estate \$51,000, par value, of the stock of the Equitable Life Assurance Society, paying therefor what Mr. Ryan originally paid with interest at 5 per cent.—about \$3,000,000—the investment yielding less than one-eighth of 1 per cent. Mr. Stillman and Mr. Baker each agreed to take a one-fourth interest in the purchase if requested to do so by Mr. Morgan. No such request has yet been made by him.

“No sufficient reason has been given for this transaction, nor does any suggest itself, unless it was the desire of these gentlemen to control the investment of the \$504,000,000 of

assets of this company, or the disposition of the bank and trust company stocks which it held and was compelled by law to sell within a stated time."

You will recall Mr. Gillespie's connection with the Equitable Company and also with the Liberty Bank, which is tied in with these associations of which I am speaking.

On pages 84 and 85:

"Third: About a year later Mr. Stillman and Mr. Baker, pursuant to an understanding between them and J. P. Morgan & Co., purchased approximately one-half of the holdings of the Mutual and Equitable Life Insurance Companies in the stock of the National Bank of Commerce, amounting altogether to some 42,200 shares. Mr. Baker being a member of the finance committee of the Mutual, it was arranged that he should purchase the Equitable's stock — about 15,250 shares — and Mr. Stillman the Mutual's. Pursuant to the understanding, Mr. Stillman turned over 10,000 shares to Morgan & Co., who already owned 7,000 shares. Mr. Baker kept 5,000 shares, turned over 5,000 to the First Security Co., and distributed the rest among various persons; 3,000 shares were allotted by Mr. Stillman and Mr. Baker to Kuhn, Loeb & Co."

On page 90:

"Relations between Morgan & Co., First National Bank, National City Bank, Lee Higginson & Co., Kidder, Peabody & Co., and Kuhn & Co. — besides the group composed of Morgan & Co. and the First National Bank and the National City Bank, the principal banking agencies through which the greater corporate enterprises of the United States obtain capital for their operations are the international banking firms of Kuhn, Loeb & Co., of New York, and Kidder, Peabody & Co. and Lee Higginson & Co., of Boston and New York.

"While it does not appear that these three last-named houses are affiliated with the group consisting of the first three in so definite and permanent a form of alliance as that

existing between the latter, it is established that as issuing houses they do not as a rule act independently in purchasing security issues but rather in unison and co-operation with one or more members of that group, with the result that in the vastly important service of arranging credits for the great commercial enterprises of the country there is no competition or rivalry between those dominating that field, but virtually a monopoly the terms of which the borrowing corporations must accept.

“ The full extent to which they participate in one another’s issues does not appear, owing to the absence of data as to the names of underwriters, other than in strictly joint-account transactions of the issues of securities made by Messrs. Morgan & Co., Kuhn, Loeb & Co., the First National Bank, and the National City Bank. The distinction between the cases in which one of the banks or banking houses assumes the relation of an underwriter of an issue of securities made by one of the others and that in which they act in joint account is that in the former case underwriters do not share in the primary bankers’ profit, but insure the former against loss, while in the case of a joint account they are partners and as such share in the original risks and profits.

“ The course of business is for the house acquiring from a corporation the right of purchasing or underwriting an issue of its securities to offer participations in the purchase or underwriting to one or more of the associates named. Taking as an illustration the latest issue of the American Telephone & Telegraph Co., the method of procedure is thus described in the testimony of Mr. Schiff. (R., 1664:”

Q. And is there not an issue now in course of offer to the public, of American Telephone & Telegraph bonds? A. There is.

Q. Advertised in the last few days? A. In course of offer to the stockholders; not the public.

Q. They are in course of offer to the stockholders and if the stockholders do not take them, are they then to be offered to the public? A. Then the underwriting syndicate will have to take

them, and whether they will offer them to the public or not I do not know.

Q. But it is an issue that is publicly offered to the stockholders?

A. It is going to be publicly offered to the stockholders.

Q. What is the amount of that issue? A. I believe it is between \$60,000,000 and \$70,000,000.

Q. It is \$67,000,000, is it not? A. It may be \$67,000,000; I do not recall.

Q. Is that a joint-account transaction between Morgan, Kidder, Peabody, and yourselves? A. It is a joint account transaction between Morgan's, First National Bank, the National City Bank, Kidder, Peabody & Co., and Baring Bros., and ourselves.

Q. Baring Bros., of London? A. Yes.

Q. Take that as an illustration; who made the deal with the company? A. I believe J. P. Morgan & Co.

Q. And they invited you to participate on joint account with these other houses? A. They did.

On page 89, referring to the group that I have mentioned:

"Fourth, as regards the greater public utility corporations.

"(a) American Telephone & Telegraph Co.: One or more members of the group are stockholders, have three representatives in its directorate, and since 1906, with other associates, have marketed for it and its subsidiaries security issues in excess of \$300,000,000.

"(b) Chicago Elevated Railways: A member of the group has two officers or directors in common with the company, and in conjunction with others marketed for it in 1911 security issues amounting to \$66,000,000.

"(c) Consolidated Gas Co. of New York: Members of the group control this company through majority representation on its directorate.

"(d) Hudson & Manhattan Railroad: One or more members of the group marketed and have large interests in the securities of this company, though its debt is now being adjusted by Kuhn, Loeb & Co.

"(e) Interborough Rapid Transit Co. of New York: A.

member of the group is the banker of this company, and the group has agreed to market its impending bond issue of \$170,000,000.

“(f) Philadelphia Rapid Transit Co.: Members of the group have two representatives in the directorate of this company.

“(g) Western Union Telegraph Co.: Members of the group have seven representatives in the directorate of this company.”

On page 101, following a table of some ten pages of securities traced through the different members of this combination of six, whose names we have read, it goes on to say:

“From this it appears that since 1905, under joint arrangements with Morgan & Co., the First National Bank, or the National City Bank, sometimes with one, sometimes with another, sometimes with all, Lea-Higginson & Co. have participated in the marketing of upward of 80 security issues aggregating about \$950,000,000; Kidder Peabody, \$1,000,000,000, and Kuhn, Loeb & Co. in the marketing of upward of 60 issues, aggregating over \$1,000,000,000.

“It was admitted by Mr. Davison, of Morgan & Co., and other bankers that the practice of banking houses becoming in effect partners in the purchasing and underwriting of securities instead of acting independently of one another is a development of recent years. Mr. Davison testified as follows (R., 1854, 1855):

This relates to Lee, Higginson, mostly, and I don't think it is necessary to read it.

“Mr. Schiff said, page 1688 (R., 1688):”

Q. Don't you know that most of the Morgan issues in the past few years have been made jointly; that is, that the City Bank has participated in them with the First National? A. I do.

Mr. Schiff is a director of the National City Bank.

On page 102, after testimony:

“Moreover, the banking houses which have joined in the

plan of co-operation comprise the principal mediums through which the greater corporations of the country obtain their supplies of capital.

“The charge for capital, which, of course, enters universally into the prices of commodities and of service, is thus in effect determined by agreement amongst those supplying it, and not under the check of competition. If there be any virtue in the principle of competition, certainly any plan or arrangement which prevents its operation in the performance of so fundamental a commercial function as the supplying of capital is peculiarly injurious.

“The possibility of competition between these banking houses in the purchase of securities is further removed by the understanding amongst them and others that one will not seek by offering better terms to take away from another a customer which it has theretofore served, and by the corollary of this, namely, that where given bankers have once satisfactorily united in bringing out an issue of a corporation they shall also join in bringing out any subsequent issue of the same corporation. This is described as a principle of banking ethics.”

On page 104, quoting the testimony of Mr. Davison of Morgan & Company:

“Q. Have you not within the last few weeks also taken an issue of \$67,000,000 of American Telephone & Telegraph Co. Bonds jointly with Lee-Higginson and other banking houses? A. No.

“Q. You participated with them in that issue? A. Excuse me, I was going to answer your question. I think with others, not including Lee-Higginson & Co. as principals, but with Kidder, Peabody & Co., the First National, the National City Bank, Baring Bros. & Co. (Ltd.), of London, and Morgan-Granfell (Ltd.), of London, we have underwritten an issue of \$67,000,000 of American Telephone & Telegraph Co. bonds.

“Q. Are they the same parties — A. I beg your pardon — and Kuhn, Loeb & Co.

"Q. Are they the same bankers or banking houses with which you had previously underwritten issues of the American Telephone & Telegraph Co.? A. Exactly; and that is a complete answer to your question.

"Q. You have together underwritten, I think, \$150,000,-000 of those bonds, have you not? A. That is my recollection."

Mr. Schiff's testimony is quoted on the same page:

"Q. Have you any instance in mind in which in the last five years you have invaded the field of Messrs. Morgan & Co. or they have invaded yours? A. I have not."

(Reads from report, pp. 104, 105.)

"This custom, by whatever name it be called, and the practice of these great banking houses which it supplements of purchasing security issues in concert and not independently can not have any other effect than the suppression of competition in the purchasing of such securities, and the creation of a combination or community of interest which may grant or withhold credit as it wills and whose terms borrowing corporations must accept."

Now, from the same report, page 72, I will read the names of the principal stockholders of the National City Bank of New York, among them J. P. Morgan & Company, 15,000; Kidder, Peabody & Co., with 1,000; William Rockefeller, 10,000; John D. Rockefeller, 1,750; Jacob H. Schiff, 500.

On page 81:

"Before becoming partners in Morgan & Co., Mr. Davison and Mr. Lamont, two of the most active members of the firm, were vice-presidents of the First National Bank, and still remain directors.

"Next to Mr. Baker, Morgan & Co. is the largest stockholder of the First National, owning 14,500 shares, making the combined holdings of Mr. Baker and his son and Morgan & Co. about 40,000 shares out of 100,000 outstanding."

COMPTROLLER PRENDERGAST comes to the stand.

Senator Thompson.—Since the Comptroller was before the Committee this morning, at which time I had no report from Mr. Morse at all, I sent for Mr. Morse and he saw me about half-past twelve, before adjournment, and he gave me his report, which he has not yet reduced in the usual form of reports that he makes to the Committee in writing; and there is only one item in the report that the Chair desired information concerning, and so far as I understand now, from the facts before the Committee, is of any value to our investigation — and that may not be — it is in relation to income that the Comptroller has from the lands company of Depew, formerly The Depew Improvement Company. And so this is the custom in these matters that we have gone into, matters of a strictly private nature, that naturally show, because the items are long, we don't show them because they are of no use to the Committee; and I called on the Comptroller and told him what there was about that that appeared to be of any interest to the Committee, and so he has consented to come here this afternoon and make an explanation; and he is here for that purpose.

Will you just tell, Mr. Comptroller — it appears that you have income from the lands company of Depew, and that is a concern — I don't like to make any intimations — which is controlled by Chauncey M. Depew —

Mr. Prendergast.— He is a stockholder.

Q. What we up our way call a "New York Central concern."

A. (Mr. Prendergast.) Of course I don't know what you call a "New York Central concern" up your way, but I know there is no reason. We don't.

Q. It is one in which Mr. Depew is interested, and Mr. Vanderbilt? A. No, no member of the Vanderbilt family has an interest, except one by marriage. But he is dead.

Q. Who are the officers? A. The officers are, William H. Hotchkiss, president; William A. Prendergast, secretary and general manager; and Henry B. Anderson, treasurer — Mr. Anderson, of Anderson and Anderson.

Q. Who are the principal stockholders? A. The principal stockholders are: Henry B. Anderson, William Vincent Astor, Nicholas Biddle, Chauncey M. Depew, Chauncey M. Depew, Jr.,

Eugene R. Ferris, Moses J. Wright, Frederick C. Whitridge, Marie De Witt Jesup, E. A. Webb.

Q. Mr. Morse's report to me was that simply since you had received approximately \$8,000 from that investment. A. I have the figures definitely. Since I have been Comptroller I have received \$6,195.71 since the first of January, 1910; or at the municipal rate of about a thousand dollars a year.

Mr. Morse.—Isn't the principal part of that — A. The principal part is one settlement at the end of the fiscal year of 1911, of \$4,378.22, due, in fact, to one of those extraordinary dispensations of Providence, when a large piece of useless property was burned down and we collected the full insurance, and the fire was regarded as a sale, and Mr. Hotchkiss and I became the beneficiaries of it.

Q. (Senator Thompson) Can I look at that list of directors again? A. Surely.

Q. That is Providence all right? A. Do you want me to tell my connection with that?

Q. Yes, if you like. Of course it comes up here, because a railroad proposition is how it occurred to us, and your explanation will probably show to the contrary? A. I want to say, Mr. Chairman, that yesterday morning I submitted to Mr. Perley Morse all my bank books and check books and other items of record and all my private papers; my check books and bank books covering the period from January 1st, 1910, when I became Comptroller of the City of New York. I also submitted to Mr. Morse the savings bank accounts of my wife and my children. And I want to say — and I want to thank Mr. Morse for the very fine courtesy with which he conducted his inquiry, which, according to his duty toward your committee, was very thorough; but I can assume under the circumstances, knowing me as well as he has, that the situation may have been somewhat embarrassing to him. At the same time I hope I relieved him from any embarrassing feelings; but I know he —

Senator Thompson.—Those remarks are respectfully referred to that Old Ladies' Bookkeeping Society of which he (Mr. Morse) was a member. A. Are you going to strike that from the

record? Because I think they are about the only thing I have heard thus far that is worth preservation in the record. Mr. Morse has made a report to you, Mr. Chairman, regarding my affairs. The item which you have asked information about is my connection with a concern called The Lands Company of Depew. In 1902 I was appointed temporary receiver of the Depew Improvement Company. And I wish to say that my appointment was not a political appointment either. It was an appointment suggested by the men who had business interests and who felt that those business interests would be protected. And for four years under the authority of the court I conducted that business. I do believe that Mr. Quackenbush was my attorney at one time. And thus, you see, the historic circle is established.

Mr. Moss.— Quackenbush says this is awful.

Senator Thompson.— That was an early indiscretion.

Mr. Prendergast.— This was before he was with the Interborough — before he had entirely lost his reputation. And as I have said, I conducted this business under the authority of the court. In 1906 a company was formed for the express purpose of taking over the business of the Depew Improvement Company, and that company was called the Land Company of Depew. I was asked to become an officer of that company. Mr. Hotchkiss of Buffalo was made its president. I was made its secretary and general manager. So that for a time, at least, you can see the progressive element was very strongly represented in the official staff.

Q. That is what is the matter with Depew now, I suppose? A. And we had managed the business, and consequently I presume those who were interested in the property wanted to avail themselves of our experience and our knowledge of the business in its further conduct. Our arrangement with the company is this — and it is an arrangement that is established under a contract, copy of which I have before me — that Mr. Hotchkiss and I were to manage the business and for a sole compensation for our management we were to receive one-third of the net profits realized from the sales of property. And we have continued that arrangement.

This is the only business connection which I retained at the time I became comptroller.

Mr. Morse.— You get one-half of that one-third? A. Yes. I retained this connection because it was a continuing one, because I felt I had a continuing interest in this property. I had given a good deal of my time and thought to it for almost eight years. And I felt that if the property were ever to be sold as a whole or there was to be a revival of business which would make real estate a better investment, that because of my efforts during eight years that I was entitled to become the beneficiary of any profit that came out of the ultimate sale of the property. Now, my actual services since I have been Comptroller have consisted in signing checks for the weekly payroll, checks for supply accounts, and signing deeds and releases of mortgages and other papers that have to be used in connection with the real estate business. I think I have been in the office of the company in this city four times since I have been Comptroller of the City of New York.

That is my connection with this company, and since January 1st, 1910, I have received for the fiscal year ending February 28th, 1910, \$517.45; for the fiscal year ending February 28th, 1911, \$4,378.22; 1912, \$314.83; 1913, \$362.05; 1914, \$591.83; and 1915, \$31.93; and for 1916, nothing. Thus endeth the chapter.

Mr. Schuster.— We believe every word of it.

Senator Thompson.— I have no more questions to ask Mr. Prendergast, unless Mr. Moss has.

Mr. Moss.— I have none.

Mr. —————.— Has that stock a market value?

Mr. Prendergast.— No; and I should say, thanks to the suggestion from Mr. Nicoll's remarks, I am not a stockholder in the company, as you know from the list of stockholders I have read.

Senator Thompson.— The stock must have some market value? A. I presume it would have a market value. He meant stock that is sold on the market.

Mr. Belmont.— You had nothing to do with the firing of the building? A. That is one of the questions that I have to refuse to answer, Mr. Belmont. (Laughter.) I don't know who did it, but his name shall be blessed.

Senator Thompson.— I see you have listed it under Sale of Property? A. The fire? Well, that is where fires are usually listed, isn't it?

(Mr. Prendergast is excused.)

MR. BELMONT resumes the stand.

Mr. Moss.— Have you in mind the time when you bought the Pelham Park and City Island Railroads? Do you recall it? A. (Mr. Belmont) I can't. No.

Mr. Nicoll.— 1901.

Q. (Mr. Moss) And sold to the Interborough about May, 1902?

Mr. Nicoll.— Yes. They acquired it in the year previous.

Q. Now, I want you to think for a moment about the time of the formation of the Inter-Met. Company — at the time that company was formed, you were among those that were in control of the Interborough? A. (Mr. Belmont) Yes, sir.

Q. And certain gentlemen connected with the Metropolitan Street Railway Company were threatening to enter into the subway field, weren't they? A. Yes.

Q. Was Mr. Whitney among them then, or was he dead? A. Mr. Whitney was at that time interested in it.

Q. Whitney and Ryan and Brady, Whitteren, Eltinge, Berwind. A. They were all interested in it.

Q. And the threat to enter the subway field was something that had to be taken seriously? Isn't that so — you dealt with it seriously? A. There was evidence, yes, that they were prepared to.

Q. And the situation was met and controlled by the creation of the Interborough-Metropolitan Company, which took the stock of the Metropolitan Street Railway, and the stock of the Interborough Rapid Transit Railway Company? A. No, not that. They took all the properties connected.

Q. But included those two? A. Yes.

Q. It included the surface and the subways, in other words?
A. Yes.

Q. You had examination of the Metropolitan Street Railway made before that was accomplished, didn't you? A. Yes, sir.

Q. And didn't Mr. Stitt report to you substantially that it was, if not a bankrupt concern, one that was in a weak condition financially? A. Yes, but that it was self-sustaining — could sustain itself.

Q. Yes. It was about a year afterwards that it went into bankruptcy, wasn't it? A. I don't know — longer than that.

Mr. Nicoll.—1907.

Q. When was the Interborough formed?

Mr. Quackenbush.—March, 1906, was the Inter-Met. And the Met. went into the hands of the receiver October 1st, 1907. A. (Mr. Belmont.) It was about eighteen months, wasn't it?

Q. And had the Interborough put in about fifteen million dollars to keep it alive — or the combination? A. That wasn't the way. There was a certain amount of capital — working capital — in the Inter-Met. which was advanced; not to subsidiary companies, but companies which it controlled.

Q. Did any of that come from the Interborough Company, or was it furnished privately? A. The advances were made by the Inter-Met., not privately.

Q. Out of earnings? A. No, it was the capital which resulted from its formation. When the Inter-Met. was formed, a certain amount of capital was put in the treasury from the sale of its securities. I don't recall the amount — some eight millions of dollars, between eight and nine, I think it was.

Q. Well, the Inter-Met. tried to hold up the Metropolitan Street Railway? A. It tried to prevent its going into the hands of a receiver, yes.

Q. The stock of the Metropolitan Street Railway Company ultimately was wiped out by foreclosure, wasn't it? A. Yes.

Q. And it amounted to about sixty-eight million dollars? A. Yes.

Q. Did the Interborough-Met. get anything for that? A. No.

Q. I have a statement before me that it obtained fifteen mil-

lion par value of New York Railway Company's stock at a cash cost of \$1,817,000. Could that be correct? A. I can't answer that by memory.

Q. Would it be a transaction something like that? A. Yes, sir.

Q. That Inter-Met. stock — a good deal of it has been bought within the last few years by persons connected with the Interborough? Isn't that so? A. I presume some of it.

Q. We have seen some checks indicating a syndicate of five men — Berwind testified to it too. I don't think that Mr. Belmont was named as being in this syndicate. Freedman was one. Hedley was one. I think Shonts was in it. Hasn't the Inter-Met. stock been made more valuable by the Dual Subway contract — at least made to sell for more — to be looked upon with more favor? A. Yes, sir.

Q. The earnings of the Interborough have been sufficient to pay the interest on the bonds. Were there any bonds? A. No; what was equivalent to its preferred stock. There was a readjustment of the capital of the Inter-Met., so that its preferred stock receives a dividend, by a slow exchange from a cumulative preferred stock to a fixed.

Q. Now, the charge was made by Mr. Gaynor in 1909 that one of the points that were being worked for by the financial gentlemen whom he characterized by various terms was to secure payment of this interest in Inter-Met. through its ownership of Interborough securities, that must be kept in a paying condition to prevent the whole thing from toppling over. That is what I have reference to, and what I have behind the question. A. I don't get —

Mr. Quackenbush.— He talks about the Inter-Met. four and a half. A. (Mr. Belmont.) I don't know whether that is all clear in your mind. If you would like me to explain that —

Q. Yes, I would; because so much has been said about it, especially by Mr. Gaynor, and a good deal of it got into the record by quotations from him, so I would like to have you explain it. A. The Inter-Met. was a holding company and its preferred and common stock was created, and the owners of the surplus securities and the stockholders, those who had interests in the Interborough and the various other corporations that were bought in con-

nection with that — they exchanged a certain proportion of their securities for the securities of the Inter-Met., it being voluntary, of course. There were some of the men who were stockholders who remained outside and didn't exchange at all. As for instance, in the case of the Interborough stock, only something over ninety per cent., I think — I recall it as ninety-five, something of that kind, exchanged their stock for preferred and common stock — a certain proportion of common stock of the Inter-Met. and of preferred stock. Those who were interested in the surplus lines did likewise, leaving a certain amount of stockholders outside. In the case of the security holders of the surface stock, when the foreclosure came, they received practically nothing. The others who had an interest were kept alive by their ownership in the Inter-Met., although it represented a very low value at that time — eight or nine or ten for the common which they had taken at about thirty and forty or something of that kind for the preferred which they had taken at about seventy-five. That was the way the Inter-Met. secured control of the entire surface system, and also the Interborough, which included the elevated and the subways of Queens County and the Forty-Second Street tunnel and all the various propositions.

The little surface road, the City and Interborough, that was the property of the Inter-Met.; when it made the exchange with the Interborough stockholders it issued its four and one-half per cent. bonds, and deposited its holdings of common stock with those four and one-half per cent. bonds, taking just twice the amount, and delivered those bonds in exchange.

Q. Two hundred dollars bonds for one hundred dollar stock? A. Yes, that was what it gave. The minority stockholders, who didn't participate in that, exist to-day, and their stock is what is called the common stock of the Interborough, and it is quoted now about three hundred and some odd.

Q. Has the common stock been wiped out in any way? A. Of the Interborough? Oh, no.

Q. And of the Inter-Met.? A. No, they have exchanged for present common stock.

Q. The formation of the Interborough Consolidated — didn't that have the effect of wiping out the common? A. No, they ex-

changed their stock voluntarily, and in like manner the preferred stock. But the preferred stockholders of the Inter-Met., the original ones, had accumulated so much unpaid back dividends that the situation was an impossible one and they exchanged their five per cent. cumulative stock for six per cent. stock, which didn't carry that feature at all.

Q. I think that is the substance of the testimony Mr. Fischer gave. The tendency of the operation was to destroy practically all the value of the common stock?

Mr. Quackenbush.— I think I may correct that. The common stock of the Interborough-Met. Company had a par value of \$100 a share. The common stock of the Interborough Consolidated Company has no par value. Mr. Belmont.— But it is the same proportionate interest in the capital as stockholder, excepting it isn't measured by a par value; but notwithstanding that these individual shares sell for precisely the same. That is to say, to-day, well, say 17 or 18. Their ownership represents exactly the same proportion of the total capital they had before, excepting it was expressed in shares of \$100, and now it is expressed in shares without any par value. That is all.

Q. These Met. surface railroad people — they practically got blackmailed themselves in the Interborough, didn't they, by their threats? A. Well, I must leave that expression to you.

Q. Well, they forced the situation. A. No, no.

Q. They forced you? A. Quite so.

Q. Maybe that isn't blackjacking, but we will say it is forcing. A. Let me explain that to you. It is a very simple thing. It is a matter of different conception of the property value. They had properties here which were profitable and which the competition of the subway and the elevated gradually would have affected. From their standpoint, which was a perfectly understandable one, they believed, because everybody at that time believed, that all you had to do was to build a subway in order to make money — exaggerated idea; that was the idea. They were prepared, and stated publicly that they were prepared, to build subways, and went so far as to yield to the general outcry for a three-cent fare. I think you will find a record of a public statement that was made in the newspapers that they were prepared to build a subway with

a three-cent fare and a free exchange between their surface roads and subway.

Q. Free exchange to the surface, with a three-cent fare! Do you really think that they meant to do that? A. That isn't the question. I don't deal with suppositions of that kind. We deal with what happened to be the facts. They were amply able to do it if they wanted to do it. They had all the facilities for capital; and the principle on which the subways were built then was this: That the City lent its credit — I mean to say it wasn't done with City money, but lent its money in this way. They agreed to issue a certain number of bonds, the principal and interest on which the operating company of the subway practically guaranteed. Also a sinking fund attached so that during the period of the operation of the subway, the capital of the City, so to speak, the bonds issued for the purpose, were amortized, you understand, and the debt on that subway disappeared and the title to them remained in the City as at first, the City owning them. That was the principle on which they were built.

It was quite clear to me and my associates that if they entered into a transaction of that kind that the ultimate result of it would be a failure; that they would be unable to run those subways profitable, and exchange with the surface lines — a free exchange — and that they would then go into bankruptcy. The contract probably — although none was ever made — would probably have the same features as the present contract has, the first contract with the Interborough — that in the event of their failure to pay the interest on the bonds, the City should pay for the same; then the City would proceed to foreclose and possess itself of the subway, with the right either to operate itself, either the right to operate itself or to take a new lessee and at the same time to possess itself of the released stock — that is, all of the tangible capital that belonged to the lessors.

At that time this community had been led by a great many publications in the papers and advocates of municipal ownership. They were led to believe that the City should own all its public utilities and operate them. You have had some experience of what that means in the ferries and in other ways. Private capital can't compete with operations on the part of a municipality for the reason that private capital is limited to what it can earn. If it

can't keep itself alive with its earnings it has to go out of existence or reorganize, if it has enough left, or disappear. Utilities operated by a municipality, if they don't succeed, fall back on the taxpayers to fill the deficiency, and go right on. That is a competition which no private enterprise can possibly compete with.

Q. I interject that that is what they will have to do on the Dual Subway project. A. I just propose to tell you what the Inter-Met. meant — what was the meaning of its establishment. Not a desire to control —

Q. I think your statement will be considered to be valuable. I am sure it will be when we go to make up the report. I think we have needed that view to be expressed. A. From our point of view it was therefore a question whether we should sit still and let those gentlemen indulge in their folly and bring about a competition of the City with its own road, and destroy its lessor — not its subway, but its lessor — or whether we should do what they really wanted; because they had a property that something had to be done with in order to protect it against the competition which was growing on the part of the Interborough. They either had to have a subway to help them out, which would take their own business instead of taking ours, have that in addition to their property, or they must sell it. When we looked over the property and found apparently that it would sustain itself, then it seemed wise business to take that property even if we could only carry it. What I mean by carrying, whether we made anything out of it or not — and take the chance of having a sufficient surplus to pay any deficiencies, and keep it alive. So far as public interest was concerned, allow me, Mr. Moss — I would like you, Mr. Moss, to listen to this, because it is important —

Q. He was commenting upon your remarks as you went along. A. But so far as the public interest is concerned, I must admit that from my point of view, and I think from that of anybody who has thought fully on the subject, it was of great benefit to the City to have a consolidation of that kind, because even if it didn't pay in itself, the surface lines were maintained, as they were, an organization with a free transfer for everybody in the City. And it was quite apparent at the moment that those surface roads broke up that the free transfer would cease.

Senator Thompson.—What do you mean by “free transfer?”

A. The surface lines transferred free from one portion to the other. For instance, instead of having to pay a certain fare as you have to now on the Third Avenue road or any road within the limits of this city, to change from one to the other, they gave them a transfer; that was before the Inter-Met. was organized, and we continued that, and that was one of the reasons they were interested — because the stockholders and the controlling interests in the surface lines had become a part of the Inter-Met.; they were stockholders, then, of the Inter-Met., and they felt that it would be a very unwise thing to allow this all to break up, the property to go to pieces, the free transfers to be destroyed, and the whole situation of transportation thrown into confusion. And that was the reason, up to the last dollar which was in the treasury of the Inter-Met., the effort was made to sustain the credit of the surface lines. That view stripped the treasury of every dollar it had in it. That that view was correct was proved afterward; and to-day notwithstanding that these lines are individually perhaps a little better managed now, and are gradually building up, the people of New York are deprived of the free transfer. Their transportation, in other words, costs them to-day a great deal more than it did then. And if public attack hadn't been made upon it, so that the credit was destroyed in 1907 of the Inter-Met., although the intrinsic value was there, if it wasn't there it couldn't to-day pay the interest on what is equivalent to the preferred stock. You understand that the intrinsic value of this combined property to-day proves that those lines might have been sustained.

Q. (Mr. Moss.) Isn't to-day the Interborough really supporting the whole, or the larger share of it? A. All that it got afterward through foreclosure, it secured those surface lines which it now manages; the others went to their bondholders and are separate organizations. And they collect their own separate fares and have no connection whatsoever.

Q. They are cut out? A. They are cut out; and it is this that follows — that the very extension of rapid transit in the City to-day again threatens those; and if they make money that money under no circumstances will be devoted to keeping for instance the Third Avenue or any of those lines alive. Whereas if it had been a great consolidated system they would have been kept alive just

as the Queens County Road to-day. The Queens County Road to-day loses a certain amount of money every year and yet the people of that section are well served by a corporation that if it had to stand on its own legs would be wiped out of existence, but is sustained by the Interborough's earnings. In other words, if the consolidation had been left as it was, had been sustained by public opinion as it should have been and not be attacked so as to destroy the credit of the whole transportation concern. To-day, the transportation of New York, instead of the profits all going into the Interborough, would have been distributed in sustaining a general transportation, both surface, elevated and subway in the City, without having had any foreclosure, and whether it was at a loss or not. In other words, when you pay a fare which was a profit or even excessive profit to one part of the system, part of that would have been devoted to sustaining the other part which was not paid. So instead of the Inter-Met. as a consolidation being condemned, it should have been applauded, because it was in the direction of trying to give to the City as a consolidated property service which they can't have and never will have again to-day.

Senator Thompson.— They are pretty well consolidated now. A. Oh, no. Here is just the point: To-day the elevated road has been three-tracked over Third Avenue to the extent that that effects the Third Avenue and weakens that corporation to that extent. The people there suffer. But if it was a consolidated corporation that owned them all, and the Third Avenue was in the possession of the Interborough to-day, it wouldn't make any difference whether the people preferred to ride on the Third Avenue Elevated or surface or whether one paid or not — all would have been operated to-day.

Mr. Quackenbush.— Second Avenue is a better one. It is still in the hands of a receiver, and nobody will take it.

Senator Thompson.— What do you have to do with the Second and Third Avenue lines? A. We owned it.

Q. Don't you own it now? A. No. This is what has happened: The surface lines through a syndicate consisting of Philadelphians and certain of our local capitalists gradually gathered together into one consolidated corporation and operated all the surface lines in the City.

Q. What corporation was that? A. That was the Metropolitan Street Railway; and as a matter of financial engineering, through which it held and acquired a great many of their properties, they had what was called The Securities Company. And through that they consolidated all the surface lines and they were compelled by law to give free transfer — so that you could pay five cents and ride all over the City, backwards and forwards, get off at one place and get a transfer and go anywhere you liked, crosstown, ferries, downtown, and everywhere. That was the property which the Inter-Met. took over, and the Inter-Met. was organized in order to prevent that breaking up and tying itself up with a set of subways, separate subways under a law which would have finally thrown the subway property into the hands of the City, operated by the City, and then would have come the wreck and the ruin of the present Interborough. You understand, who are honest, faithful and good tenants of the City's own property; what Mr. Shonts said in one of his letters there today was very true —

Q. I thought you would enjoy hearing that letter. A. That was very true — that it was unwise for the City to take any step to destroy its own property and to wreck its own tenants. That was the situation, and that is the real meaning that has never been stated or made public; that is the real meaning of the establishment of the Inter-Met. It was met with hostility on the part of the public. It entered into a period of great financial depression, when all securities went to pieces and therefore the moment that it exhausted the money in its own treasury its credit was gone. The credit of all the transportation companies was gone, because they were being attacked all the time by gentlemen perhaps not as indulgent as you gentlemen now — but the same sort of thing. And it destroyed the confidence that investors might have just as this particular investigation is checking the confidence that people have in the future of transportation investments in this City. The investor is always disturbed when he finds his property attacked, whether he thinks justly or unjustly. So it was that at that time no additional capital could be raised in order to have kept the surface lines out of difficulty and rehabilitate them. The estimate I think was made, Mr. Nicoll, that when we decided to distribute the treasury, it was an estimate of about twenty-two millions of dollars. If instead of hostility at the time there had

been approval, instead of an outcry that it was a menace to the City's rights to have a monopoly, they would have welcomed it and understood that they were getting more through that than if they had broken the system up, that twenty-two million of dollars would have been obtainable and perhaps the period of depression tided over, when what has occurred today would have occurred and saved the property, and we would have had the surface lines running today with free transfers. That is only a possibility, like some of the statements you have been suggesting; but it is not an improbability at all. That is the real essence and meaning of the Inter-Met. It was organized in order to save the surface roads from going into the folly of building subways under the law as it was at that time, and finally going to pieces with the subways and involving the whole property.

Senator Thompson.— You don't blame me if I try to get some information to finish this subject from you, on finance, because you have got the experience and I haven't. But the Buffalo, Lockport and Rochester Railroad Company build from Lockport to Rochester fifty-seven miles of tract. It cost them approximately two million dollars. They capitalize it for \$6,000,000 stock and for \$3,500,000 bonds; and they do what they had to do — they go into the hands of a receiver. Now, the receivership don't wind up — by that I mean that the receiver does not sell the property and pay it over to the owners of the road and it proceeds; but he holds the receivership until they have meetings of the committees of bondholders, and they reduce the bonds to \$2,750,000, and keep the common stock the same, and discharge the receivership; and continue to operate, paying no dividends, managing to pay the interest on the bonds. Now, why is it when that company can't pay it now, nor for ten years in the future pay an interest on that common stock, why do they keep the common stock alive with six million dollars, after going through that receivership? A. Well, put yourself in the place of a stockholder. You are an owner and supposing that you have borrowed money from a certain party and you owe them \$6,000,000 and you can't pay the interest on the loan, and they don't want to take your property — they don't want to do that. They simply want to have their own investment kept alive. And you will think that they would be willing to take

perhaps 60 per cent. of that, and you go on and manage the property and you are able to do that, and they are satisfied as creditors — only having recourse to wiping out, if they really want to do it. And they go on and give you a change. Usually they have some other junior security going ahead of you that will make your property hold in due course of time. There is no particular disadvantage as far as you are concerned whether you have all your capital stock or you reduce it. If it is represented by, say your holdings happen to be a hundred shares at \$100 a share, there is no particular advantage if they reduce that to fifty, unless they turn around and insist on rehabilitating the property that you should pay an assessment; and if you do pay an assessment, instead of agreeing to have your stock reduced, you usually want something that makes that good to you in case it is very successful. You will probably ask for something to represent that. It has the meaning of not being any particular advantage; but your proposition to the whole as a stockholder, whether it is represented by a hundred cents on the dollar or fifty cents on the dollar, is exactly the same.

Q. In this case it is represented by nothing on the dollar. A. Supposing, if you are a stockholder. If it is reduced to a dollar, it reduces everybody else to a dollar, and your holding is exactly the same.

Q. Now of course in that case they say that it is "watered stock." So using that expression, there was a road costing two million, being bonded for three and one half million. There must have been "watered bonds." A. Well, I don't know; of course, Mr. Chairman, I would be very glad to explain your questions, if I can, right.

Q. You don't know anything about this company, I know, but I do. Now, after they reorganized, as they did reorganize, and discharged the receivership, they raised the rate of fare — charged more fare than they had before. Now that was for the purpose of making a profit if possible on the stock. Now, is the public interested in that transaction? That is what I want to get from your viewpoint. Is the public interested there as to the fact whether that road carries this \$8,000,000 of stock that never cost them a cent — in fact the bonds didn't cost them their face originally —

they are worth it now. Is that fair to the public to have men owning stock with a par value, or no value, par value which they think is worth a hundred dollars a share, whether you call it the par value or not, and have them interested in making a profit out of the travelling public? Is that a fair thing to the public? A. I can't answer such a question as that, Mr. Chairman, it is impossible. I don't know the circumstances.

Q. I have related the circumstances. A. But this has to be said with regard to all transportation lines, so far as the public is concerned. You have often seen territories that appeared to you, "Well, why don't they build a railroad or a trolley line there." And the only thing that would induce the building of that would be the belief on the part of somebody that they could make money out of it. And if, in entering upon the enterprise they can't enlist capital without offering very unusual terms, that means that they can't begin at all. Even if they make a mistake, if the people who have the capital make a mistake and go in on any kind of terms, they create the transportation. They create the transportation of whatever happens in order to save their franchise, which is the only value that they have. You remember they have got to operate. They may not operate well for lack of funds or for lack of good management; but the existence of that road is there, and remains there and in the last analysis if the management is so bad it finally falls of itself, someone else steps in and takes the property and the transportation continues. Every case is a different one. But so far as the public is concerned the moment that they have created a line of transportation that usually remains, and sooner or later it goes into hands where it does become a good and serviceable piece of property. Sometimes, if there wasn't a certain amount of latitude allowed in the creation of capital, why you wouldn't have the transportation at all. If that hadn't taken place in the beginning in the development of our railroads here as well as trolley lines, we never would have had this very large amount of transportation which we have, which is probably the greatest for our territory in the world, and as they become established and as they become profitable and as they become important, why then the regulation of them and the restrictions as to creating capital can be carried on and done and improved; and

the day will come probably when our laws here will be almost like the laws in Massachusetts. But it can be overdone and it is well understood among railroad men and it is understood that they were made strictly Massachusetts; and as a result New England has suffered in transportation, as a result of that. Because if you make those too strict, and capital isn't attracted, you can't find fault with capital; because if it doesn't find profitable employment in one direction it will go to another.

Q. Should capital have — A. Did I answer your question?

Q. Yes. But should capital have an earning power as large as two million, to make it into nine million, is it necessary to give them that much earning power in order to get development? A. I really know nothing about this individual case.

Q. I ask you these questions because I don't think that case is much different than your New York City case was when you had these New York City surface railroads. I just think that that common stock at that time was watered. I don't know. I am just going to try and find out. A. I was born and I have lived there and I don't think that is the fact. In New York, when I was a boy, there were about a dozen lines of stages, all converging into Broadway. There wasn't such a thing as an elevated railway in the center of the city. There was one on Sixth Avenue and Third Avenue and Second Avenue, and they were very bad. And there was nobody in New York that had the enterprise to improve them. The lines in San Francisco were far ahead of them. And in Chicago and all the Western cities they began to have cable lines. And it was outside capital, Philadelphia capital, which came here and began the consolidation. Well, it so happened that there were scandals connected with it. But the fact remains that capital came here to develop and improve the transportation. And then they were allowed to put in the overhead system, or the present system, which is electric. And a really good system was established; and as they progressed it was exactly the same problem that confronts the City today — some portions of the transportation would be profitable and others were not to be. And so they conceived a method of having one general security which would enable them to raise capital enough to establish all the outlying lines whether they paid or not, and have them all evenly

supported by the one system. And in order to do that — I think, Mr. Quackenbush, I am explaining this right — in order to do that they took capitalization from the small lines and exchanged them and created lines of marketable securities, you understand; and so afterwards a great deal of fault was found with that, because they didn't seem to represent equal values, but created the capital, which enabled this entire system to be electrified, with new equipment, modern equipment, and start and give a thoroughly modern set of lines of transportation, with a free transfer. That broke down, and the excessive capital, whatever it was, all fell out, but the lines remained. And the City today possesses that transportation in not as profitable a form.

Q. All these lines at that time made a gross profit. That is, their income was more than their operating expenses? A. They made profit, but it was hard to say how far that went, because just as soon as they made a certain amount of profit they built additional ones, and extensions.

Mr. Quackenbush.— Mr. Belmont has made a statement which is entirely correct — that some of the lines making up that consolidation were not paying. And in answer to your question just now, to refresh Mr. Belmont's recollection of the condition on the Belt Line, where every passenger carried on the East Belt cost nearly ten cents for the five cent fare obtained from him.

Mr. Belmont.— But they supported the whole.

Mr. Quackenbush.— But the Chairman thinks all paid. For every passenger carried on the Belt Line east and west there was a loss.

Mr. Belmont.— An unsound piece of capitalization comes to grief sooner or later; but if it has created a public utility, the public utility goes on. It passes from hand to hand.

Mr. Moss.— Now the Senator has suggested, by way of illustration, let me suggest the Edison Company, by way of illustration; it just happened to flash into my mind. The Edison Company, if Mr. Maltbie is correct — I have read his statement with a great deal of interest — is capitalized about four times, if you under-

stand what I mean by that. That is, looking at the original investment, it has got four times as much capital as originally invested. Now, notwithstanding that fact, it is a going and a paying concern; there is no question about its being a money-maker, and about its supplying plenty of light and electricity to the City. Now, if a company is able, even though it overcapitalizes, to continue without defaulting and to continue to supply a good electricity or a good car service, as the case may be, do you think that it has gathered to itself that intangible thing which can't be measured or weighed, but which is a value nevertheless, that gives it a right to go on, and make its payments of interest on the bonds and its dividends upon the stock as though the three-quarters had been paid in in cash. A. The success of a corporation like that is the blessing which the people derive from it. From the fact—

Senator Thompson.—Do you mean its stockholders or the patrons? A. From the fact that it is able to expand its business, and finally supply it at wholesale. Do you understand?—at wholesale. Today, for instance, the power of the Interborough is supplied at a fraction of one cent; and which, if you attempted for a small business to create, costs you three and four; and the charge for the consumption of it would have to be high. Now, for a time—and that has proved itself right along in everything, whether it is Standard Oil, whether it is oil or whether it is electricity or gas, that for a time they are able to maintain the high price and the large profit and in their efforts to make more they are constantly cheapening their cost of production until finally the benefit of that to the public gradually comes down. If it don't come down as an economic question it is forced down by the law.

Mr. Moss.—Well, so long as the people are served with a good produce at a price which they can pay, and this service is general and good, there is no reason for the people to object to what they sometimes call over-capitalization. A. Well, that has two sides. There is reason for limitations, certainly.

Q. Of course, that idea of limitation has been put out in the Public Service Commission and it is one of the things this Public

Service Commission does, to oversee the creation of new capital. A. Well, they can carry that a great deal too far and make it so it is impossible to undertake. Now, Mr. Moss, you mention Markley; you mention him as an expert. I know him very well. He was sent over as Secretary of the Commission that was sent over there to study the subject of municipal ownership. That was a privately conducted commission, although it had government sanction and had full access to everything on the other side. And I suppose you know they have three standard volumes on the subject. Markley as Secretary, and at a salary of \$1,500.

Senator Thompson.— You didn't mean to make any insinuations there on the salary? A. Well, I think afterward when he became Commissioner he received \$15,000 for the same ability.

Mr. Moss.— Well, his capital hadn't been inflated.

Senator Thompson.— You didn't insinuate in the direction I thought you did. A. Well, his theories carried him too far. And one of the properties that belong to the Inter-Met., Fifty-ninth Street road, when it became necessary to foreclose, and it was sold under foreclosure, Mr. Markley was responsible for carrying his views in the Commission and refusing to a capitalization sufficient to rehabilitate that road, and properly equip it, by the Interborough. So much so that the Interborough was obliged to forego its purchase. Otherwise they would have taken it, re-equipped it, and been obliged under the law to furnish a free transfer to it. Instead of that we had to withdraw and it was bought by the Third Avenue Line, which makes it an independent, totally independent line, running practically out of the territory of the Third Avenue and only meeting at one end. Whereas it tapped quite a number of the other lines. There is an instance of over-zeal. Mr. Markley in that particular instance didn't do a wise thing for the public.

Mr. Moss.— I am not particularly exploiting Mr. Maltbie. I am only using him on the fact that he worked out that the capitalization was four times the actual cash originally put in.

Is it your idea that capital is not excessive as long as a com-

pany is able to stand up and do business and render good service? Is that the test? There must be a test somewhere. A. No, that is asking me to apply a general principle. But I mean the hostility is sometimes carried too far.

Q. Mayor Gaynor says the reason — I suppose you have read his "Looting New York" — he said the reason why the Metropolitan Street Railway came down with a crash was that it was excessively over-capitalized. A. It wasn't only that; it was with almost every business, you might say, if you will examine it; when new capital is put in, it is always put in on the prospect of receiving remuneration and sometimes it doesn't. And in that case they had set up a corporation which they had figured would gradually expand to the value of their capital and they couldn't have placed it excepting in the manner that they did. They probably wouldn't have attracted capital in it. So that then the competition — you must remember that when the competition came it was unexpected. You see they began before electric traction had gone to the point of development which would permit the establishment of an underground road. At one time there was no way of handling heavy units, such as running in the subway by electricity. The first rapid transit lines that were planned were underground steam roads, and with devices for the absorption of smoke, etc. It wasn't until long afterwards that they were able to create traction through electricity. Even since the establishment of the subway, the big electric traction engine has developed.

Q. I remember the first experiment that was made on the spur on Thirty-fourth Street with the electric motors on the Elevated cars. A. The point is this: That the competition which came afterwards through the development of new methods was really what about it —

Q. I knew the engineer who was in charge of those operations, making the test, and he said he desired of being able to apply electricity practically to the operation of the Elevated Railroad because the electricity seemed to be evaporated. The force has been harnessed since that day. A. Don't you think this is all an academic matter? I really have a great deal —

Q. My dear Mr. Belmont you are much to blame for it if it is; because with your delightful philosophy you have carried it out.

But it looks to me like this: That you and your associates, having a very good subway, were forced to let in a lot of people that had a tottering street railway, overcapitalized, and tottering, because they used a threat which you didn't know but what they might be foolish enough to carry out. And there came then the Inter-Met Company, in which it has turned out the Interborough had to do the carrying work, and finally the crash came. And now we have the speculation going on in Inter-Met stock in which some of the Interborough directors have been participating. I don't know that you have, because there is no proof of that; but some of the directors have been participating and it looks as though the speculative element in the Inter-Met stock has been created by this Dual Contract. A. Mr. Moss, don't you think that it would be well to look at the property itself and what it means, and at the market values — what they mean?

Q. I am quite sure that there is value. I am quite sure there is value, or the Inter-Met stock wouldn't have any speculative points at all. But the question is really, however, how far men went into the scheme for the Dual Subway, with an idea of creating a value for Inter-Met stock, and how far it has been used in that sort of speculation. A. Oh, I don't — the course of the stock was downward, and has remained so. Your argument can't work both ways, Mr. Moss. If you are trying to show here that the City had such a disadvantageous deal — so you might use the vernacular — as you say it had — and trying to prove not only that it had but there were irregular methods leading to it, why if that was the fact, it must have been of profit to somebody. The mere intervention of bankers cut no figures in the long run. I mean if you distribute even to what would be equivalent to five per cent. on the whole transaction of \$150,000,000; and you can see what that means, and you can't find in all these commissions and profits and everything any sum that is equivalent to that. If you distributed that over the ordinary life of a security of fifty years, you understand, your five per cent. distributed over fifty years, that is never going to be taxed on the company again. The life of the security, we will say, of fifty years, and of its charter, we will say — I am talking only for illustration — that is distributed

over fifty years; five years, seven per cent., one-tenth of one per cent. per annum, that is all that would mean, if it was five per cent. And it isn't anything like that. That is all the investor has to consider. If it is a solvent corporation all that he has to consider is that it is something to extend over the life of the security.

Q. But the banker got it all at once? A. But that is all that it cost for creating its capital, and its present property.

Q. What he gets, he gets at once; and it is capital for him. A. That is all that that would be — a tax upon it; and any investor would understand that perfectly well, and say that so far as the financial condition and solvency of it, it cuts no ice at all. Now then, it goes on, so that that has very little bearing on its value as an investment. The question is whether its earnings are able to sustain it in the long run. As a matter of fact, if you take the capitalization and its present earnings, it wouldn't be able to unless it responded to an average increase right straight along. That appears to be sufficient and if anybody examines the property to find that it looks as if it was going to be able not only to pay the interest on these five per cent. bonds, but enough to pay the dividends on its stock and something over and above. Now that would apparently make an investment that would be sure of its return of five per cent. on the bonds for the next fifty years or the life of any investor. In the same way, this consolidated preferred six per cent. on that and as a result of the dividend, because it can't pay that unless it has already paid the dividends on the four and one-half per cent. bonds of the Inter-Met. Now if that is the case why then are those not of greater value in the market? The fives are selling below par — five per cent. bonds, as secure as that, for the transportation of this City, selling below par. The four and a half, there is a voluntary sinking fund attached to it, so that there is something like over three million already toward the retirement of those — seventy millions of those already. Four and one-half, they are selling below 75 — 73. The Consolidated Preferred, which depends upon the surplus, and apparently able to sustain it; examining the surplus which the Interborough had, it is likely to continue that. Six per cent. sells at 75, yielding the holder 7 per cent. The common stock sells at 17, and there is even some margin over and above that. If a person, at the rate

of accumulating interest — that is if they put that in their box to stay there — we will say to double, it would take about ten years; and to make it five times the amount, which would be equivalent to par, you understand, would take something like thirty years. And then if it became par at that time, if you let it lie there, the accumulation of interest we will put at 20, would make it worth par. Then you wouldn't have lost anything. Now, with the prospect sometimes of that being able to earn something, they still have no interest; the investor has no interest there, apparently. They are much below their intrinsic value and why do you suppose it is? Because just as proceedings of this kind frighten the investor, he doesn't want to become a stockholder of a corporation that is constantly the subject of official attack, of accusation on the part of the State or the City, of malfeasance in office, of diversion of funds. "They have destroyed the credit of my property; they will pursue them in some way, and some way or other they will take away what apparently seems to be a profitable undertaking." And that is the reason why investors don't go into those enterprises more, and that is the reason for the low —

Q. Pardon me, if I interject here; because I think your testimony was that the price of these Inter-Met. securities has increased since the Dual Contracts. A. But you must remember —

Q. That is so. It is the Dual Contracts that has put new life into the Inter-Met. A. But it has made the construction of a complete system possible in the City of New York.

Q. That is a different question. A. If the State and if the municipality hadn't continued its hostility against this property under the first start of the contract, what is called Contract No. 1, the City would have built an extension five years after the beginning of the work, in 1905, would have built the extension down the west side and up the east side, and on the terms of the first contract, and with no Dual System and with much greater advantage. That was offered by the corporation. But the "World," "American" or "Journal," all these papers cried for "prohibiting the City from investing any further capital" they called it. It was simply lending its credit. But that private enterprise should be the only one permitted to enter the field of transportation in New York. Well, the Elsburg Bill was passed; and not a step forward

was taken — not a step. And yet they would have had that transportation long ago; and the very conditions that prevail to-day in the over-crowding are purely and simply the result of official astigmatism in this City. They have stood in the way of the natural development of the transportation of the City, and have forced this corporation to go on, wait until it was finally able to expand its transportation. But in the meanwhile this has occurred — over-crowding has occurred for which it isn't responsible; and the very excessive over-crowding, if you call it so, is the result of the City's own shortsightedness.

Senator Thompson.— Your idea is if the Government could let you have those franchises you could pay a hundred? A. No, I am a great believer in wise government regulation; but it can only be done by men of a long tenure of office who understand something of the subject before they go into it, practically, and have only the interests of their corporation and the public in their minds, and not that of their own political advancement.

Mr. Moss.— If these views be correct —

Senator Thompson.— This political advancement business I want to speak about. Do you know very many people that get advanced very far that are unfriendly to corporations while they are in office? A. Mr. Chairman, I neither am advocating friendliness or unfriendliness; intelligence, justice.

Q. Well, I am in favor of that myself. But I am frank to say that my experience in politics don't show me that people in office that are unfriendly to transportation and public utility corporations advance much. A. Well, I think they advance so far — take the advancement of McCall of the Interstate Commerce Commission, resulted entirely from the early hostility to corporations.

Q. (Mr. Moss.) If they advance after in office much, you will find they were friendly to corporations while in office. A. They may through both channels. And I think the most thankless position is a public official in the situation of this kind, who does exact justice and does his real duty and attends to business and doesn't attract attention excepting by the merit of his work. But those sort of men are not left in office.

Q. (Mr. Moss.) Why was it that your brother attacked these positions which you have maintained here, in *The Verdict*. Your brother attacked in *The Verdict*, published a whole lot of things contrary to that in *The Verdict* — the weekly paper. Didn't you ever see it? A. Well, I don't like to comment on that. My brother is dead.

Q. Were you associated with him at that time? A. No.

Q. You mean to say that that did not represent your view — didn't have your sanction? — what your brother did? A. No. With all due respect for my brother, he was not a man of business experience at all. That paper was published as a venture, and I never had anything to do with it.

Q. It had remarkable cartoons and remarkable articles bearing upon these very periods we have been talking about. Until I saw them again, I thought that Mr. Gaynor's attacks upon the situation were the most pungent things I had seen; but those old "*Verdict*" numbers seemed to go even further than he went. A. You thought I was interested.

Q. I didn't know I was asking you whether you were. A. No.

Q. When did *The Verdict* cease that kind of attack which we have referred to? Wasn't it about when you got control of the subway? A. I don't recall. I really don't; and I don't think, Mr. Moss — I rather you wouldn't ask me questions about *The Verdict*, the publication of my brother. He is no longer alive.

Senator Thompson.— Let's take another proposition: A man in your employ, now, Quigg — A. In my employ?

Q. Well, he is in the employ of the railroad in which you are a member of the board of directors. He went out, and according to the history, started public sentiment against certain corporations. A. He is one of the high presses of acceleration.

Q. He did that because some other corporation wanted him to, didn't he? A. Well, yes; I think all that history, that is a mass of history.

Q. I know, but it has a bearing on the proposition of the investigation, as to what they might bring out, you know. A. Well, in what sense could my evidence be of any service to you? I don't think —

Q. Well, an agitation is sometimes valuable to a corporation.

A. You know you told me yourself a little while ago, in the morning session, that if you were my press agent you would get this thing straight before the public.

Q. I think that is true. My idea of you might not be entirely reflected in the questions I ask here; but that might not change my idea on questions as to how corporations should be permitted to capitalize. And I haven't an idea on the subject yet that I am ready to stand for; but I wanted to pursue the inquiry that I made when I made the illustration of that railroad up the state, which is a new one. Wasn't it a fact that their common stock represented this franchise? A. Which?—of the Inter-Met.?

Q. Those of these street railroads? A. I think, if their history was absolutely taken into consideration their capitals were wiped out several times.

Q. Now, when a company gets in operation, as you say, the first thing they do is to strive to decrease the cost of the product. A. We were talking then about a public utility that produced electricity.

Q. Yes, that is true. They strive to decrease the cost, then they try to cover that by an increased capitalization, because that is an increased earning power, and they try to capitalize to cover it. A. There is no fixed rule about those matters, and it is very different nowadays from what it was then. We were in the throes of development; we are now no longer; we are in a condition of perfecting.

Q. Take the New York Edison case, for instance, if you like. A. But we have our lighting works, we have our water works, we have everything. This is a process of perfecting, of refining and perfecting. It is not the same period at all.

Q. I understand. But here we have got them here. They have got a real investment of possibly \$25,000,000; their capitalization is over \$150,000,000; their gross earning is over \$20,000,000 a year. They make for half a cent approximately, for two-thirds of a cent approximately, what they sell for eight cents. Now, isn't it time that the public had some interest in that thing? Shouldn't there be a time that the price that the public pay in should be reduced? In other words, shouldn't the public get some benefit of the inventive genius that has gone in to perfect

the safety of the article? That is what I was trying to drive at. A. I would rather not express an opinion in a general way like that. The public does get benefit from anything.

Q. They get the right to use, if they pay for it. But shouldn't the public have some benefit in dollars and cents? A. You know these are economic questions, and I really don't think I would like — we have already been discussing —

Q. I am only going to ask you one more question: If they do capitalize the franchise, if they do cover all the expense of construction and all the lawyers' fees and all the engineers' fees and the bonds, and they do issue the stock for the profit, which you say is the intrinsic value, should they be permitted to incorporate, and shouldn't they be held to an accountability and a fair profit on the money invested? A. Well, they are.

Q. Should they be permitted to go any further? A. And this Dual System is precisely what you have got, excepting that the preferential feature came in in order to protect the capitalists taking the risk, and up to a certain point of earning power. Outside of that they are limited — this very corporation is limited. And when it goes beyond a certain amount, the municipality will receive the difference; and because it doesn't come in two or three years it doesn't mean that it won't come in the very early part of its life.

Q. It is incorporated, and covers twenty-four companies, according to this chart. The first company, The Interborough Consolidated, takes in The New York Railways and The Interborough Rapid Transit; and those three companies have a combined capitalization of \$327,073,000. And each one of the other companies have a capitalization in bonds which is probably added to that capitalization. The people have got to pay so as to give an earning on that capitalization. A. I don't know what your question means. If you followed the principle which you tried to establish, as a matter of fact, Mr. Chairman, because these are economic questions and they would cover volumes if you discussed them enough. But if you went on the principle that the moment that that corporation or an individual was successful and made a profit that you considered excessive, over and above what you think they are entitled to, and then it should be distributed to the

public; on that principle you ought to share in the losses of those that go the other way. And you can go so far as to paralyze the interest of capital. Capital, you remember, is not represented by these great aggregations that you gentlemen are criticizing.

Q. I am not criticizing it. A. They can't pass from one transaction to another. In other words, supplying the capital for the development, too. The enterprise is in one direction to the other. They can't pass from one to the other unless those enterprises are successful; and the placing of the capital is only possible provided those enterprises become successful. The day that they place enterprises that do not, from that moment the investor leaves them, and —

Q. Some of these enterprises here that are not successful, they are incorporated in, and — A. They are all giving service to the public.

Q. I know, but they are not successful corporations. A. But they are all being maintained by the courts, and on the part of the corporation which is successful.

Q. What does The Subway Realty Company give to the public? A. It yields something like 6 per cent. on the investment. I don't know the exact amount, but through the release of the hotel which was built upon it, I think it is a 6 per cent. investment. They have got quite a large surplus. Now, that goes to the general fund. Now, supposing that the surplus that ran over — I am only taking a supposable case — that when we reach the point when that surplus runs over and the City derives a benefit, this is one of the elements that helps to reach it. Every subsidiary company that pays, it passes up into the general funds of the company and is applicable to the payment of its fixed charges, its interest on its securities; and then what is left over after all that is done, under the present preferential system, the City becomes a beneficiary, so —

Q. Some of these here don't pay. A. Some of them don't pay, but they may grow into it; but in the meanwhile they are held up in a state of efficiency. Take the Queens County, for instance.

Q. And the successful company has got to carry the unsuccessful. A. When the Queens County is obliged under the law to maintain its system, it does it. It is required under the law to pay its taxes; it does. It is obliged to pay its men; it does. In

other words, it is a growing concern, and it doesn't make any difference whether it is losing money or not; it is maintained. And as its condition improves, if it ever does, to the point of earning, it will help this whole situation to that extent, and also push the earnings up to the point where the City gets in. Now if on the other hand somebody comes along and offers the Interborough a sufficient price for it and chooses to take it, believing that when managing well that they can make money, they can consolidate it and do something with it; and we receive for that a certain amount; the proceeds of that capital would have to be invested and the interest on it, whatever it may be, the interest —

Q. We are taking our time along matters where we agree. A. You can't cut out the supporting character of every one of those.

Q. We agree to that providing all of these capitalizations mean real money. If they do then you are perfectly right; if they don't, if they are capitalized from nothing or next to nothing or over-capitalized, then there is a chance for discussion. That is the only thing I care to discuss. But I agree with you if you have got a real investment of a million dollars and incorporate for ten million dollars, the question is whether the public hasn't a right in there somewhere to stop the earning capacity. A. What was the accumulated interest on the preferred stock of the Inter-Met.?

Mr. Quackenbush.—43% — between seven and eight years. A. Yes, here is what you sometimes omit to think about. Now, talking about preferred stock, you must remember that the holders of preferred stock have that in their boxes. Those that held it from the beginning, without its paying anything, and at five per cent., it accumulated interest for these years of waiting, amounting to 43 per cent. on their capital. And some of the stocks that you were talking about, when they are held sometimes for years, without any possible return whatever; if you take an investment of that kind, \$50,000 or something, put it into a box and wait ten or twenty years and take it out and figure that you have lost five per cent. per annum on that, and you want that back, you take your pencil and see what you think that stock ought to be worth.

Q. I have got some stock, Mr. Belmont, in a door company, and it don't pay anything, and I can't possibly get any legisla-

tion anywhere to raise the price of doors. If I could I could make that pay. A. Well, you will never be able to devise any legislation that is going to force investors to put their money in things that don't attract them. That was the purpose of the Elsburg Company.

Q. But that door company, if I can make a 135% a month, I think I am entitled to it, because I take a chance. But a railroad company presents a different proposition. There you have got the public franchise, you have got the benefit of the legislation of the public creating a monopoly for you, and as a compensation back to the public shouldn't you be limited in your profit? That is the question. A. Mr. Chairman, if we continue these lessons on economics you might be able to arrive at a profit.

Q. Well, your opinion is valuable along the line, because we are not going to make any Socialist ticket report if we can help it. We would like to make an intelligent one.

Mr. Schuster.—Mr. Belmont, you don't like to give opinions, but I think this would be helpful to the Committee along certain lines: Would it be feasible to permit public utility corporations operating companies, companies holding franchises, to issue aliquot share stock, just simply nominally, no par value? A. That is what was done in the Inter-Met.

Q. But that can't be done by a public service corporation. It is only business corporations that are permitted under the statutes of the State of New York to do that. A. You mean the direct stock of a public service corporation?

Q. They are expressly excluded in the statute. A. I don't know. This is a method that is quite recent and has to be in practice sometime before it benefits and the wisdom of it all can be established.

Q. Would there be an insurmountable objection to no par value shares to be sold along side of par value shares in the market? A. Well, you see, par values — I keep repeating that — it retains its relative interest in the property through a no par value shares; you can't change that. If he is one-twentieth of the whole thing he remains one-twentieth, no matter what you do.

Q. That is the object of the question. The dollar mark on your share of stock doesn't mean anything so far as the market value or

true worth is concerned. A. But it is always measured on the principle; it is always measured on the same principle at the present time; such is the habit of it that it usually assumes immediately an apparent value of a hundred on the dollar, because it makes a difference the basis on which the dividend comes.

Q. Wouldn't it be better to eliminate all question of the deceptive effect of the dollar mark? A. I am not prepared to say that; I don't think — I am not prepared to say that in so general a way as that.

Q. You have here a large capitalization in dollars and cents. A. I don't want to express an opinion on that. It is peculiar in its nature.

Q. Isn't it a fact that a large amount of the apparent over-capitalization is simply the dollar sign on the certificates, and not in actual money value? A. Yes, it has been that in a measure. But of course it is a danger — what the law is trying to effect; it is not so much the original stockholder, as that they may fall into a misconception of this fall and suffer by it.

Q. The public won't be easily gulled, either if he sees the dollar sign on his certificate, or if he doesn't see any dollar sign. A. I don't think so. However, as I say, it is too new a subject.

I have got a meeting at half past. (Reads note.) I would be very much obliged if I could be excused. I was not expecting that your sessions would be beyond this time.

Mr. Moss.— We would be very glad to suspend. I don't intend to examine you very much further, Mr. Belmont; we could have an intermission and take it at some day next week.

Mr. Belmont.— You see, of course, it is meant that I go to the commencement at Harvard, and then I have got a great deal to do; and while I am very glad to respond to your call, I want you to remember that I can miss these meetings to great advantage to myself.

Mr. Moss.— We have no desire to have you here if we can arrange it otherwise. I will tell you — I was engaged in court yesterday with the understanding that you had pre-empted today; why, I slipped in here and I have got to go in tomorrow.

Mr. Belmont.— I missed the commencement, and I have practically given up going to New London tomorrow.

Mr. Moss.— No, no, not tomorrow.

Senator Thompson.— Saturday morning.

There are a few things I want to ask. You have been in the banking business quite a while; did you ever make a charge for service in reference to a loan? A. (Mr. Belmont.) You mean the cost of a loan?

Q. No. For your service in negotiating a loan as a banker.

A. Oh, yes.

Q. What is the custom in that respect? A. Well, it depends what kind it is. There used to be what they called "sterling loans," and they would amount to the mere commission—one per cent. for six months. And then bankers' commission used to be for corporations, used to be 6 per cent. and two and one-half per cent. commission. That sort of thing now has grown into larger amounts.

Q. But it is a commission basis. Did you ever make a flat charge for service, like a lawyer makes? A. Well, in a measure, yes. That one that you were talking about was just precisely that in its nature—the City Island; that was a general compensation, which we measured ourselves, and had a right to. You must remember the curious thing about our contract was that we had a right to charge practically what we wanted. Now, it was based on much less; if it had been taken on the basis of the entire transaction it would have been a great deal more. But we thought that was fair and sufficient; and the injustice of trying to make out that I bought a cheap property and sold it to a corporation at a high price—I didn't do anything of the kind. I bought that with the knowledge of my associates. There wasn't any purpose of turning it over to make a profit out of it. Don't you understand, the whole transaction, as a whole, at the time, I had in my hands, my firm had, not an agreement, but actual property, that belonged to everybody, and turned it over, in our hands. People only had participation certificates and quite apart from the personal risks that we were taking for the services, or everything

concerned, it didn't amount to very much. It did not. And then there was the question of future value. That that should have expanded in value doesn't necessarily follow that I may have kept it.

Q. (Mr. Moss.) Does that contract appear in your printed papers? Now, I find in your discussion this morning that you and I were talking about different things; and the record that I was speaking about was such a record as we find in our printed reports; but the testimony I have never seen. Now, perhaps that contract is something that my attention has been called to. A. You mean the court records?

Q. I have seen the court record as it is printed in our lawbooks, but the testimony I have not seen. A. In the court record they had a copy of what was called the "syndicate agreement" under which we had a right to act without a —

Q. You could charge anything you liked and you could act beforehand? A. I could have done just what you intimated, which was to have bought that without ever saying how much I paid for it, without ever taking my associates into confidence. And nothing could have been said.

Q. The form of that agreement is what has led to so much consideration. It was so unusual that it has led us to consider. A. No, it isn't an unusual feature, at all. It is done constantly. But the only reason why that wasn't disclosed was the reason that I stated — that if the purpose of it had been disclosed and it was bought — I didn't recall until today, when we were speaking, I remember now that a Mr. MacMillan managed it afterwards. If that hadn't been bought very confidentially and picked up among the stockholders it couldn't have been secured at all, because it was invaluable. There wasn't another corporation, there wasn't another franchise to be had anywhere, and it had to be done in that way — even so much so that it was paid for indirectly.

Q. Have you time for me to read to you two or three questions from a letter from John A. Wilson? A. Oh, in Washington?

Q. Yes. There are two or three questions in that letter.

Mr. Quackenbush.—This Mr. Wilson has a question pending involving these things.

Mr. Moss.— I will consider that with you, Mr. Quackenbush.

Mr. Quackenbush.— He has the courts open to him.

Mr. Moss.— I don't want to state it was from Wilson.

Mr. Quackenbush.— Just a moment — let's talk about that.

Mr. Belmont.— I shouldn't want to answer any questions.

Mr. Moss.— I will tell you what I will do. I will read you his statement, without asking you any question at all, because I would like to have you know what is here. Do you (Mr. Quackenbush) object to that?

Mr. Quackenbush.— Oh no, not at all.

Mr. Moss.— He says: The Interborough Rapid Transit Company was reorganized. It has always been operated under its own charter. At the time when the City Island Road was sold to it, their charter was useless and worthless. They were never used by it in any way. The property was entered on the Interborough Rapid Transit Company's books and carried for more than a year, as having cost \$1,500,000, and included in the assets of the company at that figure. There was no entry of any part of the million five hundred thousand dollars as having been paid to August Belmont and Company for their services. About the time of the Ivins investigation, interest on the books were changed. The million and a half in stock above referred to was not the once so-called "promoter's profit" realized by Belmont and his associates in the enterprise. Besides that amount they received of the original authorized capital of \$25,000,000, \$12,100,000 in stock in payment for the stock of the Rapid Transit Construction Company, on which \$3,600,000 had been paid in, and which owned an interest in the MacDonald contract No. 1 with the City, and which had no other value, and for the balance of the MacDonald contract, which had cost nothing. Belmont and the other directors of the Interborough Rapid Transit Company were largely interested in the MacDonald part of the contract and in the stock of the construction company of which they were directors, the buyers and sellers in the transaction being the same persons. The

net result was that Belmont and his associates received an amount of stock, this being subscribed at or above par, equal to all the money paid into enterprises by them, and a bonus of \$8,228,000, besides large salaries as officers and financial agents of the company.

It was said they received \$75,000 a year as financial agents. Anyway, that comes in another statement and that appears in one of Venner's statements.

Mr. Quackenbush.— They are partners in the enterprise. A. (Mr. Belmont.) I won't go into that at all. Please just strike that —

Q. Those are questions, and apart from John A. Wilson, they are questions. I will tell you what I am going to do — I am going to hand that letter to Mr. Quackenbush, if he is willing to take it, and you can let —

Mr. Quackenbush.— We will tell you. Now, Mr. Moss, I will be very glad to look it over; but my feeling about this is, as I said a moment ago, my disposition on behalf of the Interborough has been to furnish to this company everything that it could possibly ask in regard to the very transactions mentioned in this letter. The sub-committee have had the utmost opportunities to investigate, and I believe have investigated. But when Mr. Wilson, toward whom I personally have shown the utmost courtesy and I think he certifies to it that I am a gentleman, distinguishes me in that way from some of my associates, when he continues to write these letters, to associate himself with Venner and with the lawyers who have been engaged in the kind of business that Venner has been engaged in, and when Mr. Wilson has taken his present lawsuit to the counsel representing the Hearst newspapers in this town for the evident purpose and advantage of whatever that may bring to him — I state these facts to you because the action brought by Mr. Wilson is brought by Mr. William A. Devoort, for whom I also have personal regard and with whom I have pleasant relations. There is nothing about this, in what I say, that has the slightest enmity sonal regard and with whom I have pleasant relations. There is

nothing about this, in what I say, that has the slightest enmity toward anybody but I do think that when I am faced with litigation of that general character, where the courts are open to these people to determine these things that they should not be permitted to use your committee as a means of examining us before trial. Now, if they want to examine Mr. Belmont before trial in that litigation, the code of civil procedure provides a way which is open to them. But we have got our day in court to be heard on that.

Senator Thompson.—We realize that. That is the reason why we take it up in the way we do.

Mr. Quackenbush.—I appreciate that.

Senator Thompson.—We haven't called Mr. Wilson, we haven't called Mr. Venner. We didn't avail ourselves of the service of Mr. Venner's lawyer before he died, although he offered it to the Committee; and we have taken all the information we could get from your side of the house in all the investigation. It has been our attempt to get our testimony from respectable sources whether the testimony was respectable we will have to leave to you. But we got it from as respectable sources as we could. So I wouldn't think it was right, with Mr. Wilson having litigation with you, to put him on the stand. But when a suggestion as direct as that comes we have to take cognizance of it to see whether it is true or not.

Mr. Belmont.—What is your object? What is the purpose?

Senator Thompson.—To see how much, if any, so-called "watered" there might be in this large capitalization, that the people have got to pay out, and to see whether or not it is wise to permit you to continue to operate one railroad or one system of railroads with twenty-four companies, or whether you could get that down into one company, and get it on a reasonable business basis. Now, if the people are partners, then the public is interested. If the people are the patrons of the road, and after you get a reasonable profit they are entitled to a reduction in the price, then the public is interested. Now, I don't know whether we will

get to that or not; but that is the reason for looking in, and making the inquiry.

Now, going back to the time of your City Island proposition: I will give you my idea of it. I was not a Senator at that time. And at that time we had more strict legislation than at any time since, and a business man could hardly live. And it wasn't the business man's fault at all that conditions were as they were. It was a fault of legislators, and there wasn't any question about it. They would hold you up if you came there, and they could even go so far as to introduce some legislation that would make you come if you wouldn't come otherwise. That is true. And it had a bad effect. And I have my own personal opinion about your City Island deal, which I think agrees with what you think the public ought to think about it.

Mr. Belmont.—I must give you fair warning, Mr. Chairman, that I am going to refuse to answer any questions in connection with this, and I don't intend to answer any questions respecting it before the court, and I am going to decline to do so.

Q. We are not going to pursue you very far in that direction. A. If you want to make a recommendation to the Legislature as to the laws governing the issue of capital and overcapitalization and so forth, you can base that on the evidence that you find in the courts that are handling these matters. Because I quite agree with Mr. Quackenbush these questions are now in litigation, and this is not the place to conduct —

Q. In so far, Mr. Belmont, as they are attempting in any way to use the Committee for the purpose of helping their side of the case, I wouldn't undertake it.

Mr. Moss.—It is simply a question of getting information from any source whatever that is proper to ask, and I want to confer, I want to have Mr. Schuster, whom I think has a leveler head than I have, to confer with Mr. Quackenbush, and we will see what we can work out of the thing. It may be an examination of the books can give you what you want. A. If Mr. Quackenbush is counsel in the matter, and he can give you information, very well. But I am going to decline to answer questions on the subject.

Q. (Mr. Moss.) Now, if I had asked you those questions without your knowing they came from Mr. Wilson — A. I would have declined to answer them.

Q. They are very pertinent. A. I don't think so.

Q. Well, there is where we disagree. I don't even want to seem to ask questions that I knew came from a source that is in litigation with you without your knowing it. A. In the first place, all of these have already been threshed out. The creation of the construction and the taking over of that, all that has all been through with. It was in that investigation we had before.

Q. It certainly would be pertinent, whether that \$1,500,000 was carried on the books of the company.

Mr. Shuster.— It is.

Mr. Quackenbush.— We don't question that. We are not raising any questions of pertinence. The facts I will give to you in any way you want. But I don't want John C. Wilson to continue writing letters to this Committee and think he is going to get anything for it, because I warn you you will get one every twenty-four hours. If you once make a start with that gentleman he will keep going, and you will get one every twenty-four hours. Now, the facts are ready for you any time you want. That is all we want.

Mr. Belmont.— He understands it very well. He joined this man Venner, you know, nothing but a common blackmailer, and if you want to take the trouble to read his record — Mr. Quackenbush, have you got a copy of that record of Venner?

Mr. Quackenbush.— We have sent down to the office of Mr. Nicoll three times.

Mr. Belmont.— Because you had better read that record and see what kind of people these are.

Mr. Moss.— Mr. Belmont, I have been very slow to take anything from Venner or Wilson, because they were in litigation with you, and you have the proof of it here.

Mr. Belmont.—The only difference between Venner and Wilson is that one is positively a blackmailer and the other is only equivalent to a partaker. He came in on this thing to try to profit by it. He was one of the original stockholders and when I was in the management of the company I used to have to answer letters from him. I used to have to explain things, facts also; he was imagining all sorts of irregularities, and that is his object — some kind of recovery, isn't it?

Mr. Quackenbush.—Oh, yes; he is suing all the time, and he is in partnership with Venner and that is all you need to say anywhere in the United States today. I don't make any point about litigation generally, I can take care of all the litigation that comes along. If that seems boastful, I must say it. But I don't believe that the Legislature of the State of New York, represented here in a joint committee, wants to ally itself with people who have a reputation such as Venner.

Senator Thompson.—Not only that, we are perfectly satisfied that it is a lawsuit.

Mr. Belmont.—If you read all these things, then you will see what contemptible characters they are. They are not the kind of men who are constructing and giving the community anything. They are parasites. They are trying to get something out of what they think to be an awkward situation. They were successful. That is to say, they threatened litigation where the cost of the litigation, interfering with the marketing of securities, that would do so much harm, throwing a cloud over them, that they have collected blackmail. But in this case, where the character of my transaction becomes a question, and where even counsel said that they were quite ready to settle, I said I never would settle until the matter went through the courts, because I would never allow even the suspicion that I had done anything that wasn't right, both for my children and my own reputation, and so it went through until actually this matter was disclosed, and I never could get it before even the newspapers. I mean to say, the whole thing was explained. The value of this franchise. Now, the details and so forth can be twisted and turned simply because they have to be

kept under cover, until the time came to disclose it. If you will read over the proceedings in the suit you will find there, I was compelled under oath to disclose what happened. There you will find it, when I found I had to state it. I went to Mr. Whitney and when I told Mr. Whitney that I had this franchise, then their opposition ceased. Don't you see whether it was based upon any undue influence or not? I don't mean to intimate, and you can't make me even intimate, but they had a perfect right to go to the Legislature and try to prevent such a situation, if they could legitimately, you understand. But the withholding from us the franchise made it impossible to operate the road.

Q. (Mr. Moss) You mean when you tried to get a franchise and couldn't get it? A. Here was a franchise taken to construct, accompanied by a company to operate, without a legal means of operation. Of course if they could prevent that in the legislation, as our money began to pile up in this construction, and we were confronted with inability to operate, what sort of position would we have in the matter of credit to get any further means to complete. And so when I told Mr. Whitney that, I said, "Mr. Whitney, it doesn't make any difference really whether that franchise is granted or not. The only thing, before a grant being undertaken like this, to have a miserable little franchise like that of the City Island road doesn't seem dignified. If we are put to all that trouble we will go through with it, and in the course of time the legislation will pass."

Q. What do you mean that Whitney let up on? A. That is only that they were opposed.

Q. You mean to say he let up in his opposition at Albany? A. Any opposition that they may have exercised there ceased. Don't you see, there was the value of this property and unfortunately Mr. Fischer, who was my secretary, tried to be funny when it was a very serious matter, without meaning to — I believe he was for years my private secretary, and then became secretary of the Interborough, and I left him there on account of his ability, and he has gone on with the corporation. But he talked here about that thing, you asked questions, and an utterly indefensible construction was put upon it; either through ignorance — of course

I wasn't making my secretary cognizant of all my affairs. The testimony referred to will be found in page 439 and the following pages.

This was what gave rise to calling this a "mule road." Of course it had a value, and while we possessed it we tried to make it no value. We tried to dispose of it. If it had been connected up with some existing system, as it ultimately will be, it will have some serious value to those who have got it now. And it had the advantage at that time of being a perpetual franchise. But it wouldn't have made any difference if it had any equipment or anything. The whole and sole reason for it was its franchise. That is all. And because of the testimony that Mr. Fischer gave here and to the newspapers about a "mule road," that fastened upon it, it looked as if I had bought a miserable little mule road. A miserable little plot. That shows the injustice that a little thing like that — because of course the papers always seize upon something of that kind, and as it was most readable matter it excites the readers to think that the transaction of that kind was carried out — buying something for nothing and turning it over to great profit, which wasn't the fact; and when you read that case carefully you will see it wasn't the fact. But I will admit it wasn't well handled in the record of the company, either. That was unfortunate.

Q. Mr. Schuster has just shown me a record of the company?

A. But it was done with the knowledge of the directors and all aboard.

Mr. Schuster.—The record was submitted by the Interborough Rapid Transit Company to the sub-committee, showing this entire capitalization and transaction with the construction company as to the million five hundred thousand dollars stock. A. If it was done without the consultation, without the counsel on the subject, I don't know, because I have never seen it; I have never seen it, I only know what the real facts were.

(Witness examines record submitted by Mr. Schuster.)

This is what is stated as the capital?

Mr. Quackenbush.—This is what appears on the company's books.

Mr. Belmont.—I understand they carried that on their books that way. That might be if they carried that on their books wrongly. That is another thing. That is the fault of the Comptroller, and the Public Service Commission afterwards. It should have been written down. Of course the Public Service Commission afterwards caused them to write that down to a very small amount and it had ceased to have a value after a time. But here was the point: that wasn't bought by me as an individual. It was bought under the terms, where I was practically acting for my associates, and they knew all about it. And certainly I was entitled at least to the return of the money which was really laid out for their benefit, quite apart from any other services that I had rendered. You would have supposed from the way they criticized on what the devilish thing was worth as a railroad. It had nothing to do with it. I used to laugh about it myself sometimes, because we had this thing on our hands and I always used to say that I didn't know any railroad quite equal to it excepting that railroad at Palm Beach with one mule, from the breakers to the house. It might have been that, but in putting that sort of construction, it reflected on me. Whereas in this particular transaction it was so absolutely above board I didn't even avail absolutely of the right that I had under the contract of doing this thing without accountability at all. I had it brought before my associates; to be sure, they were satisfied with my measure of what I was going to take under my contract, and they were very well satisfied with it, and they testified afterwards in Brooklyn that it was a very small compensation; and as a matter of fact it was. Because I acted — for instance you talk about that \$75,000; why, I was acting, working president of that, of the construction company, I signed all the checks, I was just as familiar with the workings of that, and I had to abandon a great deal of attention to my own business and leave it to my partners. And remember, that was until the thing appeared successful. When it was an accomplished fact and a settled fact I said, "That is what I would like to have — is the satisfaction." Then followed after, and it seems it was in the winter, and the transfer was made then, and the action of the board was simply after the corporation became an actual corporation, it was nothing but a property in our hands, as managers of a syndicate. This letter treats of suppositions, not

facts. Somebody asked me, why don't you tell the story that you asked me to explain the other day, because the newspapers are doing you an injustice — somebody that is close to your committee. "Why," I said, "the very paper that you are connected with has persisted in it." And I said, "This publication was sent to them, and here it is all described here.

Now, remember Mr. Moss, that in the first this was a service — one of the services was to find a method which I explained to you; that method, of having a public contract secured without the intervention of the sureties, all of which refused to go on, and so in order not to have a transfer, you understand, of the contract. The assignment of the contract, which would have made it impossible if the construction company took it. We said we would be satisfied if the contractor agreed to make the payments, and so the contract remained regularly with MacDonald; but MacDonald then from that moment ceased to be anything but equivalent to a salaried officer of the company. You see, he was equivalent to it. And so that went on. That was the way it was. When it became necessary to deposit the first million dollars, I gave my check to my brother and my brother deposited. That wasn't charged and so it went on — the making and the enlarging and organization of this piece of business; giving it my whole time and attention, and when the time came and I was to take and turn this all over a finished product, I said, "I want that. That is what I think I am entitled to have." And they said, "Very well, we are very well satisfied." All that testimony you will find. That is the meaning of it. Not the City Island road. This was a part to show them that that part was a simple reimbursement for their benefit of \$173,000 and the rest would have been a compensation. Don't you see, therefore, the moment that they bark back to what has been a mistaken conception, that this was a piece of property bought and turned over in order to make some money out of it. Then I object to that.

Take a paper like the *New York World*. In the first place, when this whole business started, you must remember that the subway contract was not one drawn by private individuals; it was drawn by the rapid transit, with its engineers, a sort of "Take it or leave it proposition." Plans and everything, and they fixed the capitalization of \$35,000,000. They were the ones that made

that. And they based on this: They had inquired from all the different sub-contractors what they would build that for, giving the specifications, and their best information was that it would cost about twenty-four — twenty-five, I believe; I believe it went as high as twenty-seven, in the neighborhood of that number of millions of dollars for the construction. And having got this outline from the different contractors they made up their mind that it would be a very attractive proposition to anybody to bid for the construction of the road and make a profit of eight millions of dollars on the construction. Do you see? And then they prescribed a schedule and an equipment which they estimated would be about eight million of dollars. And if you will look back in the specifications you will find that those are not the specifications at all that were followed afterwards for either the equipment, or the train schedule, so that it was generally accepted that that was what it was going to be. It cost about twenty-four or twenty-seven millions and the balance would be clean profit, which the contractor could put into his "equipment." Well, the surface people had a report made to them which was made, I understand, by Mr. Brady; that report was to the effect that there was profit in the construction but no profit in the operation. Otherwise they wouldn't have went in it. When we got fairly started, and we were trying out our style of tracks out here on the Long Island Railroad, we had quite a list of good railroad men, when we began to examine the trained schedule, we got Mr. Bryan over here, who managed the St. Louis Terminal, we found that the train schedule wouldn't pay, and in order to give to it the kind of schedule that would carry the people and pay, we would have to have very much larger equipment. Then we found we had to build very much larger power houses, furnish greater power, and our real estate cost us a great deal of money. Our budget, our first budget for the equipment before we began to build, was seventeen millions of dollars. And then as we went along it grew to twenty-four millions of dollars, and at the time of the Ivins investigation it ran up nearly to twenty-six; and they took and cut out lawyers' fees and various charges that were made against the equipment apportioned — what you call allocation against equipment. They cut out a million or something or other so as to have our books show more in accordance with what they thought was proper although

that money had been spent, and according to my way of thinking, belonged to the equipment. We believed our equipment cost so much. They kept harping on that — the *New York World* did, harping on this question of the cost of the equipment. It was only eight millions of dollars. And they kept attacking us on the statement, I repeated, saying that our equipment had cost us nearer twenty-four and it was at that time. Then I was allowed space to make a statement, by Mr. Pulitzer himself. Five days afterward I was at Palm Beach and I was asked again about the same thing, and it had just about the same effect as the other. That is what they do, because it didn't suit them. They were attacking the corporation, and it didn't suit them to tell the truth, excepting to tell it just long enough so as to give me an opportunity, but just as soon as the effect of that was gone they began again, in just the same way; and so it went on, and as far as the public mind is concerned, it never was allowed to believe that any such an amount was put into the equipment of the subway until the Ivins Commission brought it out — not in the way of justification, but criticizing the booking, and forcing us to pass to another account expenditures that were made and carried it up to twenty-six millions and something instead of twenty-three or twenty-four. But, however, there was a proof of the correct statement that I made, and which the president wouldn't accept. They were talking then, you know, that there was the Elsberg Bill and all that legislation, and they were carrying on a regular campaign. Now, in the same way, in order to establish this, this was published; and yet I have been obliged to go on the stand several times to tell this story over. That was done in 1904. It was for the same reason that there was this constant misrepresentation.

*“Abstract from ‘Interborough Rapid Transit (The Subway)
In New York.’*

(Introduction, pp. 13-21.)

INTRODUCTION.

“The completion of the rapid transit railroad in the boroughs of Manhattan and The Bronx, which is popularly

known as the "Subway," has demonstrated that underground railroads can be built beneath the congested streets of the city, and has made possible in the near future a comprehensive system of subsurface transportation extending throughout the wide territory of Greater New York.

"In March, 1909, when the Mayor with appropriate ceremonies broke ground at the Borough Hall, in Manhattan, for the new road, there were many well-informed people, including prominent financiers and experienced engineers, who freely prophesied failure for the enterprise, although the contract had been taken by a most capable contractor, and one of the best known banking houses in America had committed himself to finance the undertaking.

"In looking at the finished road as a completed work, one is apt to wonder why it ever seemed impossible and to forget the difficulties which confronted the builders at the start.

"The railway was to be owned by the city, and built and operated under legislation unique in the history of municipal governments, complicated, and minute in provisions for the occupation of the city streets, payment of moneys by the city, and city supervision over construction and operation. Questions as to the interpretation of these provisions might have to be passed upon by the courts, with delays, how serious none could foretell, especially in New York where the crowded calendars retard speedy decisions. The experience of the elevated railroad corporations in building their lines had shown the uncertainty of depending upon legal precedents. It was not, at that time, supposed that the abutting property owners would have any legal ground for complaint against the elevated structures, but the courts found new laws for new conditions and appealed out new property rights of light, air and access, which were made the basis for a volume of litigation unprecedented in the courts of any country.

"An underground railroad was a new condition. None could say that the abutting property owners might not find rights substantial enough, at least, to entitle them to their day in court, a day which, in this State, might stretch into

many months, or even several years. Owing to the magnitude of the work, delay might easily result in failure. An eminent judge of the New York Supreme Court had emphasized the uncertainties of the situation in the following language: "Just what are the rights of the owners of property abutting upon a street or avenue, the fee in and to the soil underneath the surface of which has been acquired by the city of New York, so far as the same is not required for the ordinary city uses of gas or water pipes, or others of a like character, has never been finally determined. We have now the example of the elevated railroad, constructed and operated in the city of New York under legislative and municipal authority for nearly twenty years, which has been compelled to pay many millions of dollars to abutting property owners for the easement in the public streets appropriated by the construction and maintenance of the road, and still the amount that the road will have to pay is not ascertained. What liabilities will be imposed upon the city under this contract; what injury the construction and operation of this road will cause to abutting property, and what easements and rights will have to be acquired before the road can be legally constructed and operated, it is impossible now to ascertain."

"It is true, that the city undertook 'to secure to the contractor the right to construct and operate, free from all rights, claims, or other interference, whether by injunction, suit for damages, or otherwise on the part of any abutting owner or other person.' But another eminent judge of the same court had characterized this as 'a condition absolutely impossible of fulfillment,' and has said: 'How is the city to prevent interference with the work by injunction? That question lies with the courts; and not with the courts of this State alone, for there are cases without doubt in which the courts of the United States would have jurisdiction to act, and when such jurisdiction exists they have not hitherto shown such reluctance in acting. * * * That legal proceedings will be undertaken which will, to some extent at least, interfere with the progress of this work seems to be inevitable.* * *'

"Another difficulty was that the Constitution of the State of New York limited the debt-incurring power of the city. The capacity of the city to undertake the work had been much discussed in the courts, and the Supreme Court of the State had disposed of that phase of the situation by suggesting that it did not make such difference to the municipality whether or not the debt limit permitted a contract for the work, because if the limit should be exceeded, 'no liability could possibly be imposed upon the city,' a view which might comfort the timid taxpayers but could hardly be expected to give confidence to the capitalists who might undertake the execution of the contract.

"Various corporations, organized during the thirty odd years of unsuccessful attempts by the city to secure underground rapid transit, claimed that their franchises gave them vested rights in the streets to the exclusion of the new enterprise, and they were prepared to assert their rights in the courts. (The underground Railroad Company of the City of New York sought to enjoin the building of the road and carried their contest to the Supreme Court of the United States which did not finally decide the questions raised until March, 1904, when the subway was practically complete.)

"Rival transportation companies stood ready to obstruct the work and encourage whomever might find objection to the building of the road.

"New York has biennial elections. The road could not be completed in two years, and the attitude of one administration might not be the attitude of its successors.

"The engineering difficulties were well-nigh appalling. Towering buildings along the streets had to be considered, and the streets themselves were already occupied with a complicated network of subsurface structures, such as sewers, water and gas mains, electric cable conduits, electric surface railway conduits, telegraph and power conduits, and many vaults extending out under the streets, occupied by the abutting property owners. On the surface were street railway lines carrying a very heavy traffic night and day, and all the thoroughfares in the lower part of the city were congested with vehicular traffic.

“ Finally, the city was unwilling to take any risk, and demanded millions of dollars of security to insure the completion of the road according to the contract, the terms of which were most exacting down to the smallest detail.

“ The builders of the road did not underestimate the magnitude of the task before them. They retained the most experienced experts for every part of the work, and, perfecting an organization in an incredibly short time, proceeded to surmount and sweep aside difficulties. The result is one of which every citizen of New York may feel proud. Upon the completion of the road the city will own the best constructed and best equipped intraurban rapid transit railroad in the world. The efforts of the builders have not been limited by the strict terms of the contract. They have striven, not to equal the best devices, but to improve upon the best devices used in modern electrical railroading, to secure for the traveling public safety, comfort, and speedy transportation.

“ The road is off the surface and escapes the delays incident to congested city streets, but near the surface and accessible, light, dry, clean, and well ventilated. The stations and approaches are commodious, and the stations themselves furnish conveniences to passengers heretofore not heard of on interurban lines. There is a separate express service, with its own tracks, and the stations are so arranged that passengers may pass from local trains to express trains, and vice versa, without delay and without payment of additional fare. Special precautions have been taken and devices adopted to prevent a failure of the electric power and the consequent delays of traffic. An electro pneumatic block signal system has been devised, which excels any system heretofore used and is unique in its mechanism. The third rail for conveying the electric current is covered, so as to prevent injury to passengers and employees from contact. Special emergency and fire alarm signal systems are installed throughout the length of the road. At a few stations, where the road is not near the surface, improved escalators and elevators are provided. The cars have been designed to prevent danger from fire, and improved types of motors have been adopted, capable of sup-

plying great speed combined with complete control. Strength, utility, and convenience have not alone been considered, but all parts of the railroad structures and equipment, stations, power house, and electrical substations have been designed and constructed with a view to the beauty of their appearance, as well as to their efficiency.

“ The completion of the subway marks the solution of a problem which for over thirty years baffled the people of New York City, in spite of the best efforts of many of its foremost citizens. An extended account of Rapid Transit Legislation would be out of place here, but a brief glance at the history of the Act under the authority of which the subway has been built is necessary to a clear understanding of the work which has been accomplished. From 1850 to 1865 the street surface horse railways were sufficient for the requirements of the traveling public. As the city grew rapidly, the congestion spreading northward, to and beyond the Harlem River, the service of surface roads became entirely inadequate. As early as 1866, forty-two well known business men of the city became, by special legislative Act, incorporators of the New York City Central Underground Railway Company, to build a line from the City Hall to the Harlem River. The names of the incorporators evidenced the seriousness of the attempt, but nothing came of it. In 1873, also by special Act, Cornelius Vanderbilt and others were incorporated as The New York City Rapid Transit Company, to build an underground road from the City Hall to connect with the New York & Harlem Road at 59th Street, with a branch to the tracks of the New York Central Road. The enterprise was soon abandoned. Numerous companies were incorporated in the succeeding years under the general railroad laws, to build underground roads, but without results; among them the Central Tunnel Railway Company in 1881, The New York & New Jersey Tunnel Railway Company in 1883, The Terminal Underground Railway Company in 1886, The Underground Railroad Company of the City of New York (a consolidation of the two last companies) in 1886, and The Rapid Transit Underground Railroad Company in 1897.

“ All attempts to build a road under the early special char-

ter and later under the general laws having failed, the city secured in 1891 the passage of the Rapid Transit Act under which, as amended, the subway has been built. As originally passed it did not provide for municipal ownership. It provided that a board of five rapid transit railroad commissioners might adopt routes and general plans for a railroad, obtain the consents of the local authorities and abutting property owners, or in lieu of the consents of the property owners the approval of the Supreme Court; and then, having adopted detail plans for the construction and operation, might sell at public sale the right to build and operate the road to a corporation, whose powers and duties were defined in the Act, for such period of time and on such terms as they could. The Commissioners prepared plans and obtained the consents of the local authorities. The property owners refused their consent; the Supreme Court gave its approval in lieu thereof, but upon inviting bids the Board of Rapid Transit Railroad Commissioners found no responsible bidder.

"The late Hon. Abram S. Hewitt, as early as 1884, when legislation for underground roads was under discussion, had urged municipal ownership. Speaking in 1901, he said of his efforts in 1884:

"It was evident to me that underground rapid transit could not be secured by the investment of private capital, but in some way or other its construction was dependent upon the use of the credit of the City of New York. It was also apparent to me that if such credit were used, the property must belong to the city. Inasmuch as it would not be safe for the city to undertake the construction itself, the intervention of a contracting company appeared indispensable. To secure the city against loss, this company must necessarily be required to give a sufficient bond for the completion of the work, and be willing to enter into a contract for its continued operation under a rental which would pay the interest upon the bonds issued by the city for the construction, and provide a sinking fund sufficient for the payment of the bonds at or before maturity. It also seemed to be indispensable that the leasing company should invest in the rolling stock and in the real estate required for its power houses and other

buildings an amount of money sufficiently large to indemnify the city against loss in case the lessees should fail in their undertaking to build and operate the railroad.'

"Mr. Hewitt became Mayor of the city in 1887, and his views were presented in the form of a bill to the Legislature in the following year. The measure found practically no support. Six years later, after the Rapid Transit Commissioners had failed under the Act of 1891, as originally drawn, to obtain bidders for the franchise, the New York Chamber of Commerce undertook to solve the problem by reverting to Mr. Hewitt's idea of municipal ownership. Whether or not municipal ownership would meet the approval of the citizens of New York could not be determined; therefore, as a preliminary step, it was decided to submit the question to a popular vote. An amendment to the Act of 1891 was drawn (Chapter 752 of the Laws of 1894), which provided that the qualified electors of the city were to decide at an annual election by ballot, whether the rapid transit railway or railways should be constructed by the city and at the public's expense, and be operated under lease from the city, or should be constructed by a private corporation under a franchise to be sold in the manner attempted unsuccessfully, under the Act of 1891, as originally passed. At the fall election of 1894, the electors of the city, by a very large vote, declared against the sale of a franchise to a private corporation and in favor of ownership by the city. Several other amendments, the necessity for which developed as plans for the railway were worked out, were made up to and including the session of the Legislature of 1900, but the general scheme for rapid transit may be said to have become fixed when the electors declared in favor of municipal ownership. The main provisions of the legislation which stood upon the statute books as the Rapid Transit Act, when the contract was finally executed, February 21, 1900, may be briefly summarized as follows:

"(a) The Act was general in terms, applying to all cities in the State having a population of over one million; it was special in effect because New York was the only city having such a population. It did not limit the Rapid Transit Com-

missioners to the building of a single road, but authorized the laying out of successive roads of extensions.

“(b) A board was created consisting of the Mayor, Comptroller, or other chief financial officer of the city; the president of the Chamber of Commerce of the State of New York, by virtue of his office, and five members named in the Act; William Steinway, Seth Low, John Clafin, Alexander E. Orr, and John H. Starin, men distinguished for their business experiences, high integrity, and civic pride. Vacancies in the board were to be filled by the board itself, a guaranty of a continued uniform policy.

“(c) The board was to prepare general routes and plans and submit the question of municipal ownership to the electors of the city.

“(d) The city was authorized, in the event that the electors decided for city ownership, to issue bonds not to exceed \$50,000,000 for the construction of the road or roads and \$5,000,000 additional, if necessary, for acquiring property rights for the route. The interest on the bonds was not to exceed $3\frac{1}{2}$ per cent.

“(e) The Commissioners were given the broad power to enter into a contract (in the case of more than one road, successive contracts) on behalf of the city for the construction of the road with the person, firm, or corporation which in the opinion of the board should be best qualified to carry out the contract, and to determine the amount of the bond to be given by the contractor to secure its performance. The essential features of the contract were, however, prescribed by the Act. The contractor in and by the contract for building the road was to agree to fully equip it at his own expense, and the equipment was to include all power houses. He was also to operate the road, as lessee of the city, for a term not to exceed fifty years, upon terms to be included in the contract for construction, which might include provision for renewals of the lease upon such terms as the board should from time to time determine. The rental was to be at least equal to the amount of interest on the bonds which the city might issue for construction and one per cent. additional. The one per cent.

additional might, in the discretion of the board, be made contingent in part for the first ten years of the lease upon the earnings of the road. The rental was to be applied by the city to the interest on the bonds and the balance was to be paid into the city's general sinking fund for payment of the city's debt or into a sinking fund for the redemption at maturity of the bonds issued for the construction of the rapid transit road, or roads. In addition to the security which might be required by the board of the contractor for construction and operation, the Act provided that the city should have a first lien upon the equipment of the road to be furnished by the contractor, and at the termination of the lease the city had the privilege of purchasing such equipment from the contractor.

" (f) The city was to furnish the right of way to the contractor free from all claims of abutting property owners. The road was to be the absolute property of the city and to be deemed a part of the public streets and highways. The equipment of the road was to be exempt from taxation.

" (g) The board was authorized to include in the contract for construction provisions in detail for the supervision of the city, through the board, over the operation of the road under the lease.

" One of the most attractive — and, in fact, indispensable features of the scheme — was that the work of construction, instead of being subject to the conflicting control of various departments of the City Government, with their frequent changes in personnel, was under the exclusive supervision and control of the Rapid Transit Board, a conservative and continuous body composed of the two principal officers of the City Government, and five merchants of the very highest standing in the community.

" Provided capitalists could be found to undertake such an extensive work under the exacting provisions, the scheme was an admirable one from the taxpayers' point of view. The road would cost the city practically nothing and the obligation of the contractor to equip and operate being combined with the agreement to construct furnished a safeguard against

waste of the public funds and insured the prompt completion of the road. The interest of the contractor in the successful operation, after construction, furnished a strong incentive to see that as the construction progressed the details were consistent with successful operation and to suggest and consent to such modifications of the contract plans as might appear necessary from an operating point of view, from time to time. The rental being based upon the cost encouraged low bids, and the lien of the city upon the equipment secured the city against all risk, once the road was in operation.

“ Immediately after the vote of the electors upon the question of municipal ownership, the Rapid Transit Commissioners adopted routes and plans which they had been studying and perfecting since the failure to find bidders for the franchise under the original Act of 1891. The local authorities approved them, and again the property owners refused their consent, making an application to the Supreme Court necessary. The court refused its approval upon the ground that the city, owing to a provision of the constitution of the State limiting the city's power to incur debt, would be unable to raise the necessary money. This decision appeared to nullify all the efforts of the public spirited citizens composing the Board of Rapid Transit Commissioners and to practically prohibit further attempts on their part. They persevered, however, and in January, 1897, adopted new general routes and plans. The consolidation of a large territory into the Greater New York, and increased land values, warranted the hope that the city's debt limit would no longer be an objection, especially as the new route changed the line so as to reduce the estimated cost. The demands for rapid transit had become more and more imperative as the years went by, and it was fair to assume that neither the courts nor the municipal authorities would be overzealous to find a narrow construction of the laws. Incidentally, the constitutionality of the rapid transit legislation, in its fundamental features, had been upheld in the Supreme Court in a decision which was affirmed by the highest court of the State a few weeks after the board had adopted its new plans. The local authorities gave their consent to the new route; the property owners, as

on the two previous occasions, refused their consent; the Supreme Court gave its approval in lieu thereof; and the board was prepared to undertake the preliminaries for letting a contract. These successive steps and the preparation of the terms of the contract all took time; but finally, on November 15, 1899, a form of contract was adopted and an invitation issued by the board to contractors to bid for the construction and operation of the railroad. There were two bidders, one of whom was John B. McDonald, whose terms submitted under the invitation were accepted on January 15, 1900; and, for the first time, it seemed as if a beginning might be made in the actual construction of the rapid transit road. The letter of invitation to contractors required that every proposal should be accompanied by a certified check upon a National or State Bank, payable to the order of the Comptroller, for \$150,000, and that within ten days after acceptance, or within such further period as might be prescribed by the board, the contract should be duly executed and delivered. The amount to be paid by the city for the construction was \$35,000,000, and an additional sum not to exceed \$2,750,000 for terminals, station sites, and other purposes. The construction was to be completed in four years and a half, and the term of the lease from the city to the contractor was fixed at fifty years, with a renewal, at the option of the contractor, for twenty-five years at a rental to be agreed upon by the city, not less than the average rental for the then preceding ten years. The rental for the fifty-year term was fixed at an amount equal to the annual interest upon the bonds issued by the city for construction and 1 per cent. additional, such 1 per cent. during the first ten years to be contingent in part upon the earnings of the road. To secure the performance of the contract by Mr. McDonald the city required him to deposit \$1,000,000 in cash as security for construction, to furnish a bond with surety for \$5,000,000 as security for construction and equipment, and to furnish another bond of \$1,000,000 as continuing security for the performance of the contract. The city in addition to this security had, under the provisions of the Rapid Transit Act, a first lien on the equipment, and it should be mentioned that at the expiration

of the lease and renewals (if any) the equipment is to be turned over to the city, pending an agreement or arbitration upon the question of the price to be paid for it by the city. The contract (which covered about 200 printed pages) was minute in detail as to the work to be done, and sweeping powers of supervision were given the city through the Chief Engineer of the Board, who by the contract was made arbiter of all questions that might arise as to the interpretation of the plans and specifications. The city had been fortunate in securing for the preparation of plans the services of Mr. William Barclay Parsons, one of the foremost engineers of the country. For years as Chief Engineer of the board he had studied and developed the various plans and it was he who was to superintend on behalf of the city the completion of the work.

“During the thirty-two years of rapid transit discussion between 1868, when the New York City Central Underground Company was incorporated, up to 1900, when the invitations for bids were issued by the city, every scheme for rapid transit had failed because responsible capitalists could not be found willing to undertake the task of building a road. Each year had increased the difficulties attending such an enterprise and the scheme finally evolved had put all of the risk upon the capitalists who might attempt to finance the work, and left none upon the city. Without detracting from the credit due the public-spirited citizens who had evolved the plan of municipal ownership, it may be safely asserted that the success of the undertaking depended almost entirely upon the financial backing of the contractor. When the bid was accepted by the city no arrangements had been made for the capital necessary to carry out the contract. After its acceptance, Mr. McDonald not only found little encouragement in his efforts to secure the capital, but discovered that the surety companies were unwilling to furnish the security required of him, except on terms impossible for him to fulfill.

“The crucial point in the whole problem of rapid transit with which the citizens of New York had struggled for so many years had been reached, and failure seemed inevitable.

The requirements of the Rapid Transit Act were rigid and forbade any solution of the problem which committed the city to share in the risks of the undertaking. Engineers might make routes and plans, lawyers might draw legislative acts, the city might prepare contracts, the question was and always had been: Can anybody build the road who will agree to do it and hold the city safe from loss?

"It was obvious when the surety companies declined the issue that the whole rapid transit problem was thrown open, or rather that it always had been open. The final analysis had not been made. After all, the attitude of the surety companies was only a reflection of the general feeling of practical business and railroad men towards the whole venture. To the companies the proposition had come as a concrete business proffer and they had rejected it.

"At this critical point, Mr. McDonald sought the assistance of Mr. August Belmont. It was left to Mr. Belmont to make the final analysis, and avert the failure which impended. There was no time for indecision or delay. Whatever was to be done must be done immediately. The necessary capital must be procured, the required security must be given, and an organization for building and operating the road must be anticipated. Mr. Belmont looking through and beyond the intricacies of the Rapid Transit Act, and the complications of the contract, saw that he who undertook to surmount the difficulties presented by the attitude of the surety companies must solve the whole problem. It was not the ordinary question of financing a railroad contract. He saw that the responsibility for the entire rapid transit undertaking must be centered, and that a compact and effective organization must be planned which could deal with every phase of the situation.

"Mr. Belmont without delay took the matter up directly with the Board of Rapid Transit Railroad Commissioners, and presented a plan for the incorporation of a company to procure the security required for the performance of the contract, to furnish the capital necessary to carry on the work, and to assume supervision over the whole undertaking. Ap-

plication was to be made to the Supreme Court to modify the requirements with respect to the sureties by striking out a provision requiring the justification of the sureties in double the amount of liabilities assumed by such and reducing the minimum amount permitted to be taken by each surety from \$500,000 to \$256,000. The new corporation was to execute as surety a bond for \$4,000,000, the additional amount of \$1,000,000 to be furnished by other sureties. A beneficial interest in the bonds required from the sub-contractors was to be assigned to the city and, finally, the additional amount of \$1,000,000, in cash or securities, was to be deposited with the city as further security for the performance of the contract. The plan was approved by the Board of Rapid Transit Railroad Commissioners, and pursuant to the plan, the Rapid Transit Subway Construction Company was organized. The Supreme Court granted the application to modify the requirements as to the justification of sureties and the contract was executed February 21, 1900.

"As president and active executive head of the Rapid Transit Subway Construction Company, Mr. Belmont perfected its organization, collected the staff of engineers under whose direction the work of building the road was to be done, supervised the letting of sub-contracts, and completed the financial arrangements for carrying on the work.

"The equipment of the road included, under the terms of the contract, the rolling stock, all machinery and mechanisms for generating electricity for motive power, lighting, and signaling, and also the power house, sub-stations, and the real estate upon which they were to be erected. The magnitude of the task of providing the equipment was not generally appreciated until Mr. Belmont took the rapid transit problem in hand. He foresaw from the beginning the importance of that branch of the work, and early in 1900, immediately after the signing of the contract, turned his attention to selecting the best engineers and operating experts, and planned the organization of an operating company. As early as May, 1900, he secured the services of Mr. E. P. Bryan, who came to New York from St. Louis, resigning as

vice-president and general manager of the Terminal Railroad Association, and began a study of the construction work and plans for equipment, to the end that the problems of operation might be anticipated as the building and equipment of the road progressed. Upon the incorporation of the operating company, Mr. Bryan became vice-president.

“In the spring of 1902 the Interborough Rapid Transit Company, the operating railroad corporation was formed by the interests represented by Mr. Belmont, he becoming president and active executive head of this company also, and soon thereafter Mr. McDonald assigned to it the lease or operating part of his contract with the city, that company thereby becoming directly responsible to the city for the equipment and operation of the road, Mr. McDonald remaining as contractor for its construction. In the summer of the same year, the Board of Rapid Transit Railroad Commissioners having adopted a route and plans for an extension of the subway under the East River to the Borough of Brooklyn, the Rapid Transit Subway Construction Company entered into a contract with the city, similar in form to Mr. McDonald's contract, to build, equip, and operate the extension. Mr. McDonald, as contractor of the Rapid Transit Subway Construction Company, assumed the general supervision of the work of constructing the Brooklyn extension; and the construction work of both the original subway and the extension has been carried on under his direction. The work of construction has been greatly facilitated by the broad minded and liberal policy of the Rapid Transit Board and its chief engineer and counsel, and by the co-operation of all the other departments of the City Government, and also by the generous attitude of the Metropolitan Street Railway Company and its lessee, the New York City Railroad Company, in extending privileges which have been of great assistance in the prosecution of the work. In January, 1903, the Interborough Rapid Transit Company acquired the elevated railway system by lease for 999 years from the Man-

hattan Railway Company, thus assuring harmonious operation of the elevated roads and the subway system, including the Brooklyn extension.

"The incorporators of the Interborough Rapid Transit Company were William H. Baldwin, Jr., Charles T. Barney, August Belmont, E. P. Bryan, Andrew Freedman, James Jourdan, Gardiner M. Lane, John B. McDonald, DeLancey Nicoll, Walter G. Oakman, John Peirce, Wm. A. Read, Cornelius Vanderbilt, George W. Wickersham, and George W. Young.

"The incorporators of the Rapid Transit Subway Construction Company were Charles T. Barney, August Belmont, John B. McDonald, Walter C. Oakman, and William A. Read.

Mr. Belmont.—I don't know whether I have another copy of that. This is my only copy.

Senator Thompson.—The stenographer will run that into the record at this point.

Mr. Quackenbush.—If you want to leave that one to the stenographer, I know that we have one that I can substitute. But if that has any notes or anything —

Mr. Belmont.—It doesn't go into so much detail, but it describes what happened, and the refusal of the different sureties. It doesn't speak of the City Island Road, but you will find here on the last page, in the Spring of 1902, the operating railroad corporation was formed, I becoming president and active executive head. Mr. McDonald retained his legal characteristics as contractor. Then I think that was cancelled after you came in (Mr. Quackenbush).

Mr. Quackenbush.—Yes.

Mr. Belmont.—And the whole meaning of it was that we had to keep him in that way in order to go on his bond. And for that service alone — I recall that so well because Mr. Sheppard, who was a counsel for the Commission, came to my office and said,

“Mr. Belmont, this isn’t quite regular. I don’t see how we can approve this transaction.” Because I had been talking to Mr. Orr about it and I told him unless that was done the way I suggested, the way that we got the contract, that is, we were assured of the contract by that agreement with McDonald through which he made the payments, which had certain risks in itself, in case of his death, I said, “We are willing to take that risk as a business risk. And unless you agree to that, unless you are willing to accept that, this subway can’t be built. It is impossible to build it. There are no sureties which can be gotten anywhere, and the only way that you can do it is to allow those who are going to undertake this work to be the bondsman.” This Sheppard as a lawyer didn’t like that, and no lawyer would like that, because there was a ditch there, you know. There was a legal ditch in this thing. And I told Mr. Shepperd, “If you will attend to the legal part of it we tled. Do you want to upset this or don’t you?” This subway would not have been built and it would never have been built at that time by any other form. That explains this here, and the danger that existed — there was my risk too. Suppose it had failed and afterwards stockholders and so forth, would have said, “Why was that risk taken? — that method instead of assigning the contract and having it absolutely in hand — simply making an agreement with the contractor that we would build the thing with our money and agree to take the payments as they came.

Senator Thompson.— I think you are right about that.

Mr. Belmont.— I want you to understand.

Senator Thompson.— I will put in the record my idea — that you are entitled to the public approbation for the part you displayed in that.

Mr. Belmont.— I don’t care anything about that, although I don’t want a misconception and some idea to be allowed to go abroad and even encouraged by some; any compensation that I received was not only earned, but was not at all commensurate with the risks taken.

Senator Thompson.— And you are not to blame because it will live up to the business part. That part we have already set-

turned out more successful than was anticipated; and now you are entitled to credit. You went on and took your risk as the conditions were at that time; conditions are different today. Now so far as you are concerned that is true. But let's take the proposition which is more up to date — of the financiers, Morgan and associations, Kuhn, Loeb & Company, Kidder, Peabody & Company, whoever they are, they come into a situation where they talk absolutely no risk, they run no chance whatever, and they make more money than you did; making all this without going to the risk you want to. Now, there is a difference between you and those conditions, and the conditions that are here today. If it is any good to you, that is my opinion, and I am going to put it into the record now.

Mr. Belmont.— That isn't quite — these larger interests that have taken hold of this thing had risks to run.

Senator Thompson.— You see, when I try to be a press agent for you, you won't let me.

Adjournment to June 23, 1916, at 11 o'clock.

Mr. Moss.— In connection with the testimony of Mr. Belmont, there is placed on file a memorandum made by the auditor of the Interborough Rapid Transit Company, which now follows:

(The agreement to which Mr. Belmont referred in his testimony is read by counsel from memorandum, as follows:)

“And the bankers are specifically authorized and empowered themselves to purchase any stock of such corporation or corporations, and after such purchase, with accountability in respect thereof, to sell the same to the operating company for such price as they may deem reasonable and profitable.”

A further clause releases the underwriter from any responsibility for legal or other mistakes. The contract, in other words, appears, to place those who go into such a arrangement at the mercy of the underwriter.

(Referring to extracts from newspapers inserted into the record.) The extracts from newspapers are entered in the record not as proof of the facts herein stated, but as examples of the printed discussions of the periods of their dates.

JUNE 23, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

The Committee came to order at 11 o'clock A. M., Senator Thompson presiding.

Senator Thompson.—I would like to put in evidence this "Imperial Consolidated System," compiled April 1st, 1916, showing the chart of the Interborough and its companies.

(Exhibit chart "Imperial Consolidated System," offered in evidence June 23rd, placed in record June 22nd.)

Testimony of HOWARD ABEL.

HOWARD ABEL, being recalled as a witness, testified as follows:

Examination by Mr. Schuster:

Q. Have you a copy of the form of certificate of indebtedness that you testified regarding the other day? A. Yes, sir.

Q. You don't happen to have the form of the Brooklyn Heights certificate, do you? A. They are all substantially the same.

Q. The witness produces document purporting to be a form of certificate of indebtedness used by the subsidiary companies of the Brooklyn Rapid Transit System in financing their expenditures through the Brooklyn Rapid Transit Company. That is fair, isn't it—that way of putting it? A. "In financing their expenditures," yes.

Q. I offer this in evidence and ask to have it marked as Exhibit No. 1—

"Certificate of Indebtedness, No. . . . , Transit Development Company hereby certifies that for value received it is indebted to Brooklyn Rapid Transit Company in the sum of \$. . . , which it agrees to pay on demand on presentation of this certificate, properly endorsed, with interest at the rate of 6 per cent. per annum from the date hereof, to be paid semi-annually, on the first day of January and July each year. The proceeds of this certificate of indebtedness have been used by the corporation executing this certificate in acquiring or improving the property hereinafter described, which is now held by said corporation in trust for the

purposes hereinafter set forth; all of which expenditures are additional to those covered by certificates of indebtedness of said corporation, Nos. 1 to inclusive. The following is a list of property acquired or improvements made as aforesaid:"

Then follows a blank space, doubtless meant to fill in the description of the properties and so forth acquired, or the improvements made as referred to in the body of the certificate. After which certificate continues:

" This certificate is one of a series of certificates of indebtedness numbered consecutively from " 1 " upwards, heretofore issued and to be issued hereafter by said Transit Development Company pursuant to the terms of its agreement with the Brooklyn Rapid Transit Company, dated March 29th, 1907, and secured as agreed therein by its mortgage of even date therewith, to the Central Trust Company of New York, and deposited and to be deposited with said Central Trust Company of New York pursuant to the terms of and as provided in said agreement of March 29th, 1907, mortgage of even date therewith, and the mortgage of said Brooklyn Rapid Transit Company to the Central Trust Company of New York, dated July 1st, 1902. It is agreed between the holder of this certificate and the said Transit Development Company that all of the property described in said certificates so deposited shall be held in trust by the Transit Development Company for the payment of said certificates of indebtedness pursuant to the terms of the agreement and mortgages before mentioned.

In witness whereof, the Transit Development Company has caused these presents to be executed by its President, and its corporate seal to be hereinto affixed and attested by its Secretary, this .. day of

Signed, Transit Development Company, by.....,
President, attest, Secretary.

This form of certificate, Mr. Abel, is identical with the exception of name and possible references to contracts and their dates, by the Brooklyn Heights Company and any of the other corporations for which the Brooklyn Rapid Transit Company furnishes finance of expenditure? A. I think your exceptions — I will say yes. But to make it absolutely correct, I think I should mention

that some of the companies don't have a mortgage to secure the certificate as is the case in the Transit Development Company.

Q. Does the Brooklyn Heights? A. I don't think so. But in the case of the Transit Development Company and one or two of the other companies, there are mortgages securing this certificate.

Q. And you do use a certificate of indebtedness with the other companies, do you not? A. Yes, the same method obtains for all the companies.

Q. And they are put under the same trust agreement? A. Precisely.

Q. Between the B. R. T. and the Central Trust Company? A. Yes.

Q. And are all treated alike, regardless of the company from which they come? A. Yes, sir.

Q. Have you a copy of the agreement referred to in this certificate between the Transit Development Company and the Brooklyn Rapid Transit Company, dated March 29th, 1907? A. I think Mr. Williams has a copy.

Q. I offer in evidence copy of an instrument produced by Mr. Williams, counsel to the Brooklyn Rapid Transit Company, being an agreement made the 29th day of March, 1907, by and between Transit Development Company and Brooklyn Rapid Transit Company and the Central Trust Company of New York, and being the agreement referred to in the form of the certificate of indebtedness just read, and ask to have that marked as an exhibit, Exhibit No. 2.

Is there a like agreement of trust affecting the certificates of indebtedness between the Brooklyn Heights Railroad Company and the Brooklyn Rapid Transit Company? A. No.

Q. Is there any agreement in writing between the Brooklyn Heights and the Brooklyn Rapid Transit Company with regard to the certificates of indebtedness? A. There is an agreement between the Brooklyn Heights and the Brooklyn Rapid Transit Company in reference to the furnishing of moneys for the improvement of Brooklyn City lines?

Q. You say "the Brooklyn City lines." A. That is, the Brooklyn City Railroad Company" lines.

Q. And did you bring that with you? A. No, I did not.

Q. Mr. Yeomans agreed the other day to furnish that. A. You asked Mr. Yeomans for a copy of the Brooklyn City lease the other day.

Mr. Williams.— I don't think he understood he was to present a copy of the agreement.

Q. You will furnish us with a copy? A. (Mr. Abel) If you wish.

Q. Do you recall the date of that agreement? A. 1896.

Q. Agreement dated the year 1896 between the Brooklyn Rapid Transit Company and the Brooklyn Heights Railroad Company, and a copy of which will be furnished by the witness. Now, that agreement provides for its method of finance by the certificate of indebtedness? A. It tells a long story in reference to this Long Island traction.

Q. Simply to be chronologically orderly in this matter, I wanted to get this point into the record. Now, Mr. Abel, will you describe for the Committee the process of creating these certificates, and carry us right through from the beginning to the lodging of this certificate with the Central Trust Company, as briefly as you can give it to us? A. When any work is about to be undertaken, the department concerned outlines the character of the work to be done, and submits a form of authorization describing the work; and that then comes to the accounting department to be classified as to whether it is chargeable to capital or to expense; and so soon as the work has been duly approved by the departments concerned and the president or the vice-president as the case may be, having first probably been authorized by the executive committee if it is a large undertaking. And then as from month to month those expenditures are made, the accounting department sets forth the items on these forms. They are then submitted to the board of directors or executive committee, authorized by said committee and are then transmitted, are then sold by the respective companies to the Brooklyn Rapid Transit Company at their face value. The Brooklyn Rapid Transit Company having acquired

these, authorizes the trustee to authenticate bonds to an equivalent amount to cover. The executive committee of the Brooklyn Rapid Transit Company or its board of directors having duly sanctioned the purchase of these certificates that have been submitted, they are then pledged with the Central Trust Company of New York as collateral to the Brooklyn Rapid Transit Company's 4 per cent. mortgage, and the Brooklyn Rapid Transit 4 per cent. bonds are issued against these certificates. I might add that when the mortgage was created in 1902, those bonds had a convertible clause for a number of years, and because of that feature the company was able to sell these 4 per cent. bonds at an attractive basis.

Q. Those were convertible into capital stock of the Brooklyn Rapid Transit Company at par? A. Yes, sir, and all but about 3,000,000 of an issue of about 35,000,000 have been so converted.

Q. That convertible right of course has now ceased? A. Yes, sir.

Q. And any additional bonds that are issued will be without any right to convert into capital stock under that agreement? A. As the agreement stands now.

Q. When those bonds are sold, are they sold at par or at the then prevailing market value? A. Those 4 per cent. bonds were sold as low as 75 and as high as 101. The discount was taken out of the surplus profits of the B. R. T. system, except for the first million, and that was charged against the cost of securities. All other discount has been taken out of earnings. It amounts to about \$6,000,000.

Q. And that was taken out of the earnings of the Brooklyn Rapid Transit Company, and not out of the companies which may have issued the certificate? A. It was taken out of the Brooklyn Rapid Transit Company?

Q. Now the Brooklyn Rapid Transit Company continues to collect the interest accruing from time to time on these certificates of indebtedness, and that goes into their income account? A. Yes, sir.

Q. That mortgage was the mortgage under which these certificates were pledged as collateral? A. Dated July 1st, 1902.

Q. And that is a mortgage running to the Central Trust Company as trustee for the holders of the bonds which you have described? A. Yes, sir.

Q. This \$150,000,000 mortgage runs for how long? A. Until 2002.

Q. And as the underlying bonds, first mortgage bonds, fall due, it is expected that they will be taken up by a sale of bonds? A. That the mortgage provides for.

Q. I will offer that in evidence, and if you will furnish us with a copy, will ask to have it marked as an exhibit.

Referring to a statement prepared for the committee pursuant to its letter of February 29th, 1916: You sold J. P. Morgan & Company in 1909, \$5,000,000 worth of those bonds, did you not? A. We sold Morgan five million, I think, at that time.

Q. Do you have a copy of that? A. I don't have it with me, no.

Q. That is the statement on page 3 of the Price-Waterhouse report. Now, can you tell us the basis on which that five million was sold to Morgan & Company? As I understand it, those are 4 per cent. bonds. Do you recall the basis on which these were sold? Do you know whether there was an agreement at that time? You were with the company, were you not? A. Yes, I have been with the company a long time, and I have had a lot of transactions.

Q. Can you recall whether there was an agreement? A. Morgan & Company have sold bonds from time to time and I think in that transaction they probably got them at 70.

Q. They bought those at 70? A. I would have to look at the record.

Q. Was that a basis — was that on an increased basis of interest, calling for a prepayment? A. No, they were sold flat. I think Morgan got a per cent. commission. I don't know whether it was 2 per cent. or not.

Q. I notice that you seem to carry on your books, according to the statement of Price, Waterhouse & Company, which I will read at page 3: "Bonds, first refunding 4 per cent. gold mortgage bonds were issued to J. P. Morgan & Company for sale, \$5,000,000 — March, 1908, \$2,000,000; April, 1908, \$2,500,000; January, 1909, \$500,000; total, \$5,000,000. Cash proceeds, \$3,503,618.75. Discount and commission, \$1,496,381.25." Do you

know what was the rate of commission paid to Morgan on that deal? A. May I look at that a minute? * * * On Appendix 2, Question 3, in this pamphlet that you have handed me, there is an amount of \$90,000, which would be 2 per cent. on four and a half million, paid to Morgan as a commission on the sale of bonds in March, 1908. I don't see any reference to the last five hundred thousand. I don't recall as to just how those were sold — whether at the same rate or at a different rate. I would have to consult the records.

Q. That probably was the prevailing rate in the year 1909. If the rate was 2 per cent., then a hundred thousand dollars would be the outside amount. On the whole five million it would have amounted to — A. \$100,000 on the whole five million, yes.

Q. And the remainder, \$1,396,000 odd thousand dollars represents a discount? A. The difference between par and the proceeds.

Q. Now, that wasn't interest? A. These are long-time bonds. That is a different story. They were not sold on an interest basis; they were sold at a flat price. It wasn't a question of borrowing money at a certain rate of interest and giving a form of security to suit the banker's convenience; they took what we had, a 4 per cent. long-term bond. It wasn't a 6-year 5 per cent. note on a 6 per cent. basis; it was a 4 per cent. long-term bond, and a hundred years to run. They took them at a flat price.

Q. And that is discount, of course? A. That is a discount on the principal of the indebtedness.

Q. But was it effected in any way by the term of the instrument? A. I think the negotiations might have had something to do with that.

Q. You don't recall whether there was any writing between Morgan & Company and the B. R. T. in regard to this sale of bonds? A. I presume there was.

Q. Will you look and see whether there was a form of contract or letters constituting a contract in reference to that, please, and furnish them to us Monday. These certificates of indebtedness are without any specific or definite term of payment? A. On demand.

Q. Now you have converted into capital stock, bonds. What is the transaction when you sell the bonds instead of converting them into stock? What has been the result there? You would receive the market price for the bonds, would you, ordinarily? A. Yes.

Q. And that market price — was that taken by the Brooklyn Rapid Transit Company to reimburse its treasury? A. Yes.

Q. But the certificates of indebtedness still remained as an outstanding obligation unpaid on the books of your company? A. On the books of the constituent company that created the debt and affords the security for the bond to the Brooklyn Rapid Transit Company, and are held in the custody of the trustee of the mortgage.

Q. Well, what treatment does the proceeds of the sale of those bonds receive on your books — that is, the Brooklyn Rapid Transit Company's books? A. The Brooklyn Rapid Transit Company creates its debt and issues bonds and charges the bank to whom it sold them, and the bank that paid the bill, and there is an end to the transaction.

Q. But you still continue to carry on your books as a capital asset the certificate of deposit? A. Why certainly.

Q. And also have the cash in your treasury representing the par value of that certificate or the market value of the bond? A. For our own bond, we must get the certificate first of all, and we have to borrow the money to buy the certificate before we sell the bond or take it from our earnings.

Q. It is the same as if the certificate of indebtedness had passed into the hands of the holder of the bonds? A. The certificate of indebtedness is the indebtedness of the individual company; it is bought by another company and it is pledged as security for that other company's debt creation, and is held in trust for the benefit of the bondholder to the Brooklyn Rapid Transit Company. It can't be cancelled until it is paid.

Q. But you continue to be the owner and holder of the certificate? A. The Brooklyn Rapid Transit Company continues to be, the equitable owner; and the trustee of the Brooklyn Rapid Transit Company's mortgage is the actual holder.

Q. But you continue to carry the amount of the certificate of indebtedness as a credit asset? A. Certainly.

Q. And you have outstanding a bond that you have sold to reimburse your treasury? A. Yes, sir.

Q. For the amount of that certificate? A. Yes, sir.

Q. Is that the method with regard to all of the subsidiary companies financing through the Brooklyn Rapid Transit Company?

A. They sell certificates of indebtedness to the Brooklyn Rapid Transit Company.

Q. In addition to that the Brooklyn Rapid Transit Company makes expenditures and advances in behalf of the subsidiary companies which are in the form either of open accounts receivable or of bills receivable? A. Well, if the advances are in connection with the capital improvement, except for some special reason, a certificate of indebtedness would issue. That special reason might be where we wanted to issue extension bonds perhaps in some of our companies that have an open mortgage, and we might not issue certificates of indebtedness for those, preferring to issue the mortgage. But that would be exception rather than the rule.

Q. Well, is there any charging off any where in books of the Rapid Transit Company, any deduction whatsoever when you sell a bond and receive the cash with respect to these certificates of indebtedness? A. I don't just understand what you mean. I don't see why the Brooklyn Rapid Transit Company, simply because it sells its refunding mortgage bonds and gets the money for them, would turn around for some other asset that has nothing whatsoever to do with the transaction.

Q. Now, in bookkeeping terms, if I get this clear, when the Brooklyn Rapid Transit Company acquires one of these certificates, say of \$1,000, you would set up on the debit side, to improvements, probably classified, that thousand dollars? A. When you say "You," who do you mean?

Q. Brooklyn Rapid Transit Company. A. No. The Brooklyn Rapid Transit Company would charge on its books, certificates of indebtedness receivable.

Q. And against the company issuing it, would you carry any account for that company? A. Yes, designates the certificate.

Q. Now, you in turn take that certificate, and lodge it with the Trust Company under the mortgage, and then sell a bond and receive, we will say, a thousand dollars? You sell it at par? A. Yes.

Q. You receive a thousand dollars in each. Now, that thousand dollars is in no way credited against the certificate of indebtedness, of course? A. We settle the liability for the bond that we sell; we charge cash for the proceeds.

Q. And you have also the credit against the company issuing the certificate of indebtedness of a thousand dollars? A. We charge our investment account with the certificates of indebtedness that we have bought.

Q. Now, when you have converted one of those bonds which were issued against a certificate into capital stock — A. We cancel the debt for the bond and we create a debt for the stock.

Q. But the certificate of indebtedness remains as security? A. Yes, for the bonds that remain outstanding.

Q. Those bonds carry 4 per cent.? A. Yes, sir.

Q. And the Brooklyn Rapid Transit Company is receiving 6 per cent. for the money? A. Yes, sir. . .

Q. So that there accrues there, there might accrue there, on a par transaction, 2 per cent. income? A. Supposing that the Brooklyn Rapid Transit Company can sell a 4 per cent. bond at par; but you can go into the market and buy those 4 per cent. bonds to-day at 80.

Q. Your experience has demonstrated that it costs you about 6 per cent., does it, to handle those bonds? A. When the bonds had the convertibility feature, the speculative element prompted people to take them on a better basis than 6 per cent.

Q. Naturally. Well, now that the speculative element is removed, you are limited to the market value? A. We haven't sold any since.

Q. Whatever bonds have been issued in that way, you have retained in your treasury? A. Yes, sir.

Q. And June 30, 1915, that aggregated \$5,096,000, according to this balance sheet statement. A. They had more than that. In quoting that five million figure, you have disregarded the bonds they have pledged as collateral, of which there are ten million of the issue for the rapid transit improvements.

Q. That would appear in your balance sheet? A. Yes, it would appear in our balance sheet.

Q. Under what heading does that appear? A. Collateral to secure loans of the Brooklyn Rapid Transit Balance Sheet.

Q. I find here under Bond Investments, Collateral to Secured Loans, \$5,937,000. A. May I look at that a minute?

Q. I beg your pardon — That was for 1909. In 1915 it was \$53,000,000. That includes all your collateral, including what is left of the \$60,000,000 of bonds you bought from the New York Municipal, does it? A. That would include the \$40,000,000 bonds of the New York Municipal, which are hypothecated by the Brooklyn Rapid Transit Company as a security to its note issue made in behalf of the New York Municipal.

Q. Your remaining \$20,000,000 of New York Municipal were not sold until after June 30, 1915. A. Yes, sir.

Q. So that a ten million bonds which you speak of as being lodged as collateral is included in this \$53,000,000 as of June 30th? A. Yes, sir.

Q. Now, in conversion of those bonds, certificates of indebtedness still remain lodged with the trustee on discharge; does that trust agreement protect that capital stock in any way? Has that some mortgage right? A. The capital stock protects the trustee rather than the reverse. You have got the stockholders to put in all that money which reinforces the bond.

Q. You didn't understand my question. I probably didn't make it clear. Your bonds outstanding of course are protected by the value of those certificates of indebtedness? A. Yes.

Q. That is the security, the property that is secured. Now, from time to time you lodged with the Trust Company under that mortgage something like thirty millions in value of amount of those certificates of indebtedness, and issued your bonds. The holders of those bonds, so long as it remained a bond, that bond was protected by lien on those certificates. Now, when they convert that bond and it is surrendered into stock, and they receive their stock certificate, that stock certificate has no lien, is a credit on the values of those certificates. A. All the stockholders are on a parity. Of course they have no right of foreclosure the same as the bondholders would have.

Q. So that that allows the outstanding bonds —? A. It makes the outstanding bonds so much better.

Q. In that you have converted an obligation secured by a lien into an unsecured lien into the form of capital stock? A. Inci-

dentally you have cut out an obligatory interest charge for an optional dividend.

Q. I should think that that situation would make a very secure investment out of your 4 per cent., and therefore the market price ought to be augmented by that fact. A. Yes, but 4 per cent. is a very low rate, and in 1902 money wasn't worth so much as it is now. Lots of bonds were selling at a 4 per cent. basis; and it is very rare that you will find a security to-day that sells as low as 4 per cent.

Q. Do you know what the market on those four per cents are to-day? A. About 80.

Q. So that would yield the purchaser of those bonds about 5 per cent. So that the Brooklyn Rapid Transit Company has a margin of income out of the interest from these certificates of indebtedness over and above the cost of financing those certificates? A. It depends on what it sells the bonds for.

Q. Even when they sell at 80, they have got approximately one per cent? A. If the Brooklyn Rapid Transit Company sells a 4 per cent. bond at 80 and gets 6 per cent. on the security it buys, it has a margin of 1 per cent.

Q. Have those bonds ever sold below? A. Yes; I am not sure whether they sold at 70 — I know they sold at 75, and I think they did sell at 70. As to selling below, I don't think the company ever sold much below 70. But they sold in open market at 56.

Q. But the company didn't have to sell at any such price? A. Fortunately not.

Q. Is the Brooklyn Rapid Transit Company accumulating any funds to take care of the depreciation and possible loss on this? A. I don't understand why you ask that question. The Brooklyn Rapid Transit Company is secured in its purchase of these certificates, and as to any depreciation, the only depreciation it could have would be in its security holdings. The Brooklyn Rapid Transit Company doesn't make a practice of writing its securities up and down. If it did it could perhaps write considerable securities up. It charges the actual cost on its books.

Q. The reason I asked that question is because of the very unusual character of such a certificate, running interminable, possibly for a hundred years, during which time the very properties

that are created will all be wiped out. A. By the terms of the certificate, the property must be maintained, and we can't charge one dollar to capital that isn't a proper capital charge. The Public Service Commission have the right —

Q. What supervision is there over the transaction of the Brooklyn Rapid Transit Company by any authority to determine whether or not they are maintaining their value in their plants? A. When you speak of the Brooklyn Rapid Transit Company do you mean the Brooklyn Rapid Transit system?

Q. No, I mean the Brooklyn Rapid Transit Company. It makes its responsibility to the trustee to see that the properties are maintained. A. The Brooklyn Rapid Transit Company buys these undertakings of all the different constituent companies, and each constituent company undertakes to maintain the integrity of each certificate it sells.

Q. I understood you to say that the Brooklyn Rapid Transit Company in its trust agreement undertakes to see that these properties are maintained? A. The Brooklyn Rapid Transit Company agrees to buy the securities that these different companies shall issue.

Q. Now, all of the companies issuing certificates of indebtedness under this plan — are they all subject to supervision by the Public Service Commission? A. The Transit Development Company is not. I think that is the single exception.

Q. That is the only one. All the rest are subject to supervision of the Public Service Commission? A. Yes.

Q. I don't remember whether I asked you the other day or not, but I am going to ask you again, do you know whether or not the Public Service Commission exercises any supervision whatsoever over the amount and character of the expenditures, the debt of which is evidenced by these certificates of indebtedness? A. The same as any other capital expenditure, irrespective of what the debt is evidenced by, the Public Service Commission has it scrutinized.

Q. But you do not have to go to the Commission for authority for the Brooklyn Heights or any of these public service corporations to have them authorize expenditures or the issue of securities? A. No.

Q. And all of these certificates, so far as any of the public service corporations are concerned in your system, are only issued for capital improvements and acquisitions of property? A. That is all.

Q. Does each of the public service corporations in your system make any provision whatsoever to take care of the depreciation on their plants? A. Yes, sir.

Q. And is your agreement with those corporations such that any sinking fund or reserve of those companies is likewise pledged under your agreement or mortgage? A. I don't know of any sinking fund provisions except in the case of the Nassau there is a small sinking fund on certain Nassau bonds, and there is sinking fund on Coney Island Brooklyn bonds that have been issued.

Q. Do I understand that there is no provision made for amortising these certificates or in some way providing means of ultimately paying them off? A. No, but there is no provision for paying off a certificate, the creator of it would have the option, if he could get the money on any more favorable basis to pay it out.

Q. And the holder, the trustee, has the option of calling the payment of the certificate at any time? A. The trustee does not.

Q. Who has that option? A. The Brooklyn Rapid Transit Company would have the option.

Q. But in order to be availed of the benefits of the security, represented by those certificates, do you mean to say the trustee would have no right to demand payment? A. All the trustee can't demand payment so long as there is no default under the mortgage, so long as the terms of the mortgage are lived up to, the trustee is simply the custodian of the collateral, and he has no right of foreclosure. He has a right of foreclosure in certain events.

Q. Well, let us assume that the Brooklyn Rapid Transit Company would refuse to demand payment when the trustee had knowledge and all the bondholders had knowledge that there was being a waste of the profits, thereby depreciating the security that those certificates represent, would he have no powers under this mortgage? A. Now you are asking me to pass on a legal proposition.

Q. I assumed that that must be expressly provided for in the mortgage. Isn't he given all the rights of protecting the collateral?

A. Yes.

Q. And could if an occasion arose demand payment from any of those companies? A. It would be necessary to protect the security.

Q. You see it is entirely possible for one of these operating companies to go into insolvency and still not affect, or yet in any way a default, under the mortgage which the Brooklyn Rapid Transit Company has. A. I think you are suggesting unnecessary troubles, because the Brooklyn Rapid Transit Company bondholders, of whom there are only three million four hundred odd thousand dollars at present outside of the bonds that are in the treasury is secured by —

Q. There is no discussion of that. I don't question the fundamental strength of this security at all. I don't know that I question anything about it. But the transaction I think you will concede is not a customary and usual method of finance. A. It is unusually conservative.

Q. That may be. But that it is better than the customary method —

Mr. Woody.—Yoo have a copy of the mortgage. There are certain provisions under this mortgage which could be foreclosed and the exact details as to this security — A. The trustee can't move under the mortgage unless there is a default, unless there is some fraud.

Q. I am convinced that the old method of finance is not necessarily the sine qua non of all wisdom for all time, and you may have a system here that is superior; and if so it is important that this Committee understand it, as it may affect their recommendations. A. If we hadn't had this system of finance, we never would have been able to have gone out and borrowed \$40,000,000 for this subway undertaking. It was the very fact that the B. R. T. refunding bonds had been converted and stock taken in their place which enabled us to sell the bankers these notes.

Q. Do you consider that your situation is peculiar and unusual by reason of the multiplicity of corporations that you have to

maintain, or is it a system — A. I wouldn't characterize it that way. I think it is extremely simple.

Q. Your method here of finance could be adopted by other corporations? A. Certainly.

Q. Although not like situated? A. Certainly.

Q. Of course a single corporation couldn't do it, but two or more could, that were dominated or controlled and owned by one?

A. A single corporation can issue a bond and then convert them into stock and then issue its stock to sell the stock.

Q. Oh, yes, they can do all those things. But you are issuing here a demand paper that in all probability will remain unredeemed and unpaid for the period of a hundred years, and that is rather an unusual situation, that is all. A. The Brooklyn Rapid Transit Company insists on a demand note and the probably wouldn't loan the money if they didn't get a demand note.

Q. I simply wish to say that if there is any information that might be helpful to the Committee in understanding this method of finance, I would be grateful for it; because I will say for myself that I am interested in what I have already learned of it, and I would like to know all about it, if I could. A. The Brooklyn Rapid Transit Company reinforced itself financially by asking its stockholders to forego any dividends for a period of about thirteen or fourteen years, and some of the stockholders have paid as high as \$5,300 a share for their stock and didn't get any dividends for ten or twelve years. In the meantime the Brooklyn Rapid Transit Company had issued a four per cent convertible bond which was subsequently exchanged for stock and that conversion placed the Brooklyn Rapid Transit Company in a very strong financial position.

Q. Now, Mr. Abel, in going over the records furnished us by your accountants, Messrs. Price, Waterhouse & Company, I find the answer to some of those questions, particularly question 7 — Dates, Names and Amounts of All Payments from January 1, 1908, to date, To Special Counsel for Services Rendered, etc.; I find itemized in this statement a large amount of expenditures for legal services, which seems to pertain to some litigation between the Brooklyn Heights Railroad Company and the Brooklyn City

Railroad Company — that is, between the lessor and the lessee of the Brooklyn City Railroad Company's properties. That was a litigation, as I understand, that in some way revolved around the certificates of indebtedness or expenditures for which certificates of indebtedness were issued. A. No sir, it grows out of the lease of the Brooklyn City Railroad which was made as of February 14, 1893, in favor of the Brooklyn Heights Railroad and was operative when certain conditions had been met, one of which was the depositing of the guarantee fund of four million odd dollars. The agreement didn't therefore really become operative until sometime in June, 1913; in the interim the Brooklyn City had made certain capital expenditures. It had made certain expenditures and charged to capital which were not considered capital charges.

Q. That is, the Brooklyn City? A. The lessors. And an accounting was asked for and this lawsuit ensued. The case was given to a referee and the investigation by the referee took several years. And the payment of that fee, that has been referred to, was for services of counsel extending over a period say from about 1896, I think it was, until about 1913 or '14, I am not sure which. When it finally terminated, we got a judgment, or the Brooklyn Heights Railroad Company get a judgment from the Brooklyn City for something like \$1,800,000 and the interest that accrued on that judgment amounted to about \$1,400,000. The case was appealed and the Appellate Division, I think, of the Supreme Court, reversed the judgment as to the interest and allowed the principal. And the case was taken to the Court of Appeals and whilst it was pending in the Court of Appeals a compromise was made with the Brooklyn City and the entire obligation disposed of for \$1,750,000 or thereabouts.

Q. Approximately in conformity with the opinion in the Court of Appeals, or the decision in the Court of Appeals? A. It never reached a decision in the Court of Appeals.

Q. I mean the Appellate Division; the amount compromised was approximately the amount that would have been allowed? A. Substantially so, yes.

Q. There was no part of that that was for expenditures made by the Brooklyn Heights Railroad Company? Those expenditures,

as I understand it, were made by the lessor? A. This allowance was for the shortcomings of the Brooklyn City under the provisions of its lease to the Brooklyn Heights. At the time the lease was made the Brooklyn City created a bond issue, the proceeds to be used for the electrification of their horse-car lines and some of this money had not in the judgment of the lessee been used as the contract contemplated it. As a consequence, this lawsuit ensued.

Q. Well now, the amount included in that judgment, that accrued to the Brooklyn Heights Railroad Company, and was paid by the Brooklyn City? A. The Brooklyn City paid that in installments, I think.

Q. I got the impression that this was one of those transactions growing out of the expenditures in behalf of the Brooklyn City. A. You might have gotten that impression if you had had the records. I don't know just what you have got. It is my recollection that when this agreement of settlement was made, it was stipulated that if the payment of \$1,750,000, a part of it should go to diminish the charges on the Brooklyn Heights books against the Brooklyn City, and the balance was a credit to the Brooklyn Heights Profit and Loss Account, representing the interest on the amount of the judgment.

Q. And the decision of the Appellate Division—they cut out there the interest? A. That they did for the time being, yes.

Q. Now is there any part of that transaction that is in any way tied up with any certificates of indebtedness held by the Brooklyn Rapid Transit Company or its trustee? A. No, sir.

Q. And could in no way affect? A. No. It antedated the Brooklyn Rapid Transit's mortgage ten years—six years, anyway.

Q. Well, I am glad to have that explanation. Now, is there any possibility of any of the subsidiary companies issuing those certificates questioning their amount or validity in any way? Are there any defenses against them that you know of or have any defenses arisen or controversies arisen between the Brooklyn Rapid Transit and any of its subsidiary companies? A. No, sir.

Q. I am not looking at the analysis of your corporate surplus of the Brooklyn Heights Railroad Company and I notice this item in the statement or analysis for the year ending June 30, 1915: "Transfer of surplus to Brooklyn Rapid Transit Company, \$1,000,000." What is that — surplus earnings? A. Yes, sir.

Q. And is there some agreement resting between the Brooklyn Heights Railroad Company and the Brooklyn Rapid Transit Company providing for that? A. The Brooklyn Heights Railroad Company hypothecated the Brooklyn City lease as security to collateral trust notes in 1894, I think, three or four. There was a default on the notes and they were sold at foreclosure, and the Brooklyn Rapid Transit Company bought them; and in that way the Brooklyn Rapid Transit Company bought all the profits and earnings arising from the Brooklyn City lines.

Q. And what was the amount of these trust certificates issued? A. I don't remember.

Q. And what is their term? A. That I don't know.

Q. And for the purchase of those, they paid a cash or made some allowance for expenditures? A. The Brooklyn Rapid Transit Company bought at foreclosure these certificates of indebtedness with the collateral that went with them, and a part of the collateral, with the profits which the Brooklyn Heights might derive from the operation of the Brooklyn City lease.

Q. That already had been hypothecated prior to the time that the Brooklyn Rapid Transit Company became the owner of the capital stock of the Brooklyn Heights? A. Yes, sir.

Q. And that was done to protect your stock holdings, I take it? A. What do you mean — "done to protect the stock holdings"?

Q. Your ownership — these were sold at public sale under a foreclosure of trust agreement? A. The Brooklyn Rapid Transit Company bought it as an investment, I suppose, at the time.

Q. Were they in control at that time — at the time of the foreclosure and sale of the Brooklyn Heights? A. No, sir.

Q. One of the methods of acquisition of that property for its control on the part of the Brooklyn Rapid Transit? A. I don't know what led up to the transaction. All I know is what transpired. The indebtedness was secured by the profits from the

operation of the Brooklyn City lease and the notes were defaulted on and they were sold at foreclosure and the Brooklyn Rapid Transit happened to be the buyer.

Q. Do you recall what year that was? A. I don't know whether it was 1893 or '4 — back in the early nineties.

Q. I notice the same item in 1915 amounted to \$700,000, and that comes under the same terms? A. Yes, sir.

Q. So that all of the earnings, net earnings, surplus earnings, of the Brooklyn Heights Railroad Company gets into the treasury of the Brooklyn Rapid Transit Company? A. Yes, sir.

Q. And by the surplus earnings, that is, after deducting the income deduction, do you have income deductions to take care of those things? In other words, it is a net surplus? A. Yes, sir.

Q. That seems to have run through all of the years covered by Price, Waterhouse investigations? A. I don't know whether the amount was there every year.

Q. There was a surplus paid to the Brooklyn Rapid Transit — \$65,000? A. Whatever those reports show is correct.

Q. Oh, I don't doubt that. Mr. Abel, is there any acknowledgment or permanent record of any character of an evidential nature which establishes the so-called "equity" of the Brooklyn City road construction, amounting to five million three hundred eighty odd thousand dollars, as carried on the books of the Brooklyn Rapid Transit Company? In other words, what is the evidence that establishes that asset? A. The payment of the money by the Brooklyn Rapid Transit to the Brooklyn Heights from time to time and the Heights in turn spending it for those purposes.

Q. So that it is dependent upon the agreements and understandings of the Brooklyn Heights Railroad Company with the Brooklyn Rapid Transit Company? A. Yes, sir.

Q. Not by reason of any acknowledgment or evidence of interest binding upon the Brooklyn City Railroad Company as such? A. No; the Brooklyn City would come in under the terms of its lease to the Brooklyn Heights in February, 1893, in the event of the termination of the Brooklyn City lease.

Q. Have you that lease with you?

Mr. Williams.— I think Mr. Woody has.

Q. Is this lease in printed form, so that we could have this copy put in evidence? A. (Mr. Abel) I think you can have that.

Q. I offer in evidence as an exhibit, copy of lease dated February 14, 1893, between the Brooklyn City Railroad Company and the Brooklyn Heights Railroad Company; Exhibit No. 3.

Was this lease ever recorded? A. I presume so. Isn't there a reference at the back?

Mr. Woody.— It may not be printed in there, but I know it is recorded.

Mr. Abel.— That is the lease out of which this lawsuit ensued.

Q. This lease covers all of the properties of every name and nature, apparently, of the Brooklyn City Railroad Company, excepting the franchise right and privilege of the lessor to be a corporation and necessary for its continued existence and organization as such; and is for a term of 999 years from its date, February 4th, 1893. At the time of taking over this lease, was this an electric railroad? A. It was in process of electrification.

Q. And has under the operation of the Brooklyn Heights Railroad been completed in its electrification and operated as such for several years? A. Yes, sir.

Q. Do you know whether the Brooklyn City Railroad Company reports to the Public Service Commission? A. They do.

Q. But its transactions do not pass under your supervision in any way? A. The Brooklyn City's transactions simply consist in paying the rent and paying the stockholders their dividend and the bondholders their interest.

Q. This lease of course was entered into prior to the organization of the Public Service Commission? A. Yes, sir.

Q. The rental under this lease is at the rate of 10 per cent. net per annum upon the capital stock of the lessor, from time to time outstanding, not in excess of \$12,000,000? A. And the interest from time to time outstanding on its bonded indebtedness, which shall not exceed \$6,925,000.

Q. That rental is paid quarterly? A. Yes, sir.

Q. And the cost of keeping up the corporate existence? Any indebtedness issued by the Brooklyn City Railroad Company in

excess of the mortgage indebtedness allowed under this lease, the lease is in no wise subject to any such subsequent mortgage? A. The Brooklyn City has nothing it can mortgage except the cash it gets.

Q. It has the right to mortgage? A. I don't think that the City can injunction this property. There is a provision in the mortgage that as from time to time the existing debt matures, the renewal debt may be created which shall not exceed the interest rate then obtaining.

Q. I asked you the other day whether you could state even approximately how much of the moneys advanced by the Brooklyn Rapid Transit Company on account of the Brooklyn Heights Railroad Company had gone into the improvement of its properties under this lease, belonging to the Brooklyn City Railroad Company. Have you any — A. I can give you the amount expended by the Brooklyn Heights and probably 99 per cent. of it came from the Brooklyn Rapid Transit Company, distinguishing between the two propositions as you have suggested. Do you see what I mean? Some of this money may have come from the Brooklyn Heights own treasury and not have come from the Brooklyn Rapid Transit Company, and if I quote from the balance sheet, I must quote it as they appear irrespective of where the money came from.

Q. You think that at least 99 per cent. of whatever the Brooklyn Heights records show was expended upon the properties of the Brooklyn City Railroad Company, was furnished by the Brooklyn Rapid Transit Company in certificates? A. Yes, sir. That would be true as to the entire expense. Now as between the Brooklyn Heights and the Brooklyn City the Brooklyn Heights expenditures on its own lines after December 31st, 1909, was \$483,914; the expenditures by the Brooklyn Heights as of June 30, 1915, irrespective of capital expenditures prior to December 31st, 1906, which is a divisional date to comply with the requirements of the Public Service Commission, is \$263,914.39; and expenditures on its own lines since that date, \$1,596.13, for street railway capital expenditures. And I think that should be designated as intangible, although the word isn't shown here.

This \$1,506.13: That wasn't any of it expended or incurred for the benefit of the Brooklyn City Railroad Company property, so I don't care about it. A. No, sir. And the tangible, \$28,-172.35. As to expenditures on the leased lines, which is the Brooklyn City lines, at June 30, 1915. But irrespective of it appearing antedating December 31st, 1908, was \$7,551,451.31. And expenditures on the Brooklyn City lines since December 31st, 1908, is \$12,044,258.82.

Q. Eighty-two? A. Yes.

Q. That brings you right down to date, of June 30, 1915? A. Yes. Roughly, \$9,600,000.

Q. That is over nine million and a half for which certificates were issued; the properties created or the improvements made accrue to the Brooklyn City Railroad Company. That goes to enhance the value of the Brooklyn City Railroad Company's properties? A. Yes, sir.

Q. I believe by some of your intercorporate agreements that you mentioned the other day, the City Railroad Company and the B. R. T., should anything happen, the Brooklyn City Railroad Company and the B. R. T. will in some way be able to protect itself on those certificates and expenditures and acquire the properties? A. The Brooklyn Heights is required to reflect on its books. Yes.

Q. Now is this nine and a half million and better any part of the equity in the Brooklyn City Railroad construction that is set forth as an item? A. Yes, sir, that forms a part of it.

Senator Thompson.—Mr. Abel, I show you a voucher, No. 1100, Long Island Loan and Trust Company, Borough of Brooklyn, and paid to the order of Phillip J. Britt, \$2,000. That was for a retainer in the action of the Admiralty Realty Company against the Bradley Contracting Company, William J. Gaynor and others.

Q. Who did he represent? A. That I don't know.

Q. That was for services in the Admiralty Realty case? A. As a retainer.

Q. You don't know whether he represented the B. R. T. or whether he represented one of the others? A. That I can't tell.

Q. Can you tell, Mr. Woody?

Mr. Woody.—He was retained by us, represented our company.

Q. But who did he represent as a matter of record in the lawsuit? A. I think he made out a brief and it was filed by us in the Admiralty case.

Q. Does he appear as an attorney of record in the case?

Mr. Woody.—No.

Q. I will offer that voucher in evidence, Exhibit No. 4: Long Island Loan & Trust Company, to the order of Charles A. Collin, \$3,800, August 21st, 1912, special legal services in Admiralty Realty case, the Ryan case and the Hooper case to test the constitutionality of the Brooklyn Union Railroad preferential and sub-way in the Brooklyn Union Railroad Company. Do you know who Mr. Collin represented? A. The B. R. T.

Q. Did he appear as the attorney of record? A. No.

Q. Here is another one. May 16, 1914. Morgan J. O'Brien, \$2,500, services rendered in the matter of litigation affecting Dual System Rapid Transit contract. That was the same litigation, wasn't it?

Mr. Woody.—Yes.

Q. This O'Brien was charged to Construction "B." What does that mean? A. That is to differentiate between the construction account subject to the Dual Contract and other items. This did not go in as part of the cost under the contract.

Q. I don't see any suspense account on your vouchers.

Mr. Morse.—Isn't Construction "B" the same as "Other Expenses?" A. That is a general heading.

Q. Construction "B" practically means the same thing? A. I don't know.

Q. It is items held in suspense? A. That would be it, probably.

Senator Thompson.—So that this is suspense?

Q. And this charge, A. Collin, was charged to subways. What does that mean? A. That means that forms part of the cost in the subway contract.

Senator Thompson.—It means direct charge to cost A. Yes.

Q. And the Britt was charged to subways, the same thing? A. (Mr. Abel.) Yes.

Q. We have here a bill of Cravath & Henderson for professional services to Kuhn, Loeb & Company, \$295,284.49. One half is the proportion of the New York Municipal Railway corporation, \$12,642.25 was paid November 7th, 1913. Is that correct? A. Yes.

Q. Where was the other hundred — you paid Kuhn, Loeb & Company one-half? A. I don't know.

Q. As I take it, it wasn't some other subsidiary company that paid the other half? A. No, we simply assumed one-half the bill.

Q. This bill was paid by you to Kuhn, Loeb & Company, of \$1,642,25? A. Yes, sir; but this forms no part of the cost of the subway contract.

Q. That is charged to suspense, Groups A to E inclusive? What does that mean? A. This, notwithstanding that, Mr. Yeomans said O. K. but not out of bond proceeds, but inadvertently it was so charged and then taken out.

Q. It was first charged to Construction "B"? A. It was charged to Construction under the subway contract, and then it was taken out and recharged to B.

Q. It was first then charged to Fixed Capital? A. Yes.

Q. And then it was taken out on January 1st, 1909, by a journal entry and charged to Construction "B," which you have already explained? A. Yes.

Q. So it stands in that Construction "B" account? Here is another bill, of Joline, Larkin & Rathbone. Who are they? A. Counsels for the trustee of the mortgage.

Q. That is \$50,000. That is for services rendered in connection with contract between B. R. T. on one part and your companies and others, the other part.

Mr. Williams.— They rendered services during the entire subway negotiations.

Q. Evidenced by letters dated June 10th, and including all services rendered to the Central Trust Company as trustee in con-

nection with matters connected therewith, \$50,000. That was paid April 14, 1913. Is that correct? A. Yes, sir, and forms no part of the cost.

Q. I understand. It was charged to the New York Municipal Railway corporation, \$50,000. Well, where is the New York Municipal Railway Corporation charge for that? A. Charges to Construction "B" and carries it in suspense.

Q. Then here is another one, of services, to Spooner & Cotton. Who are they — lawyers? A. Counsel for Kuhn, Loeb.

Q. Well, they make this bill direct to you, for professional services, as counsel for the purchasers of notes. In regard to mortgages and contracts of the New York Municipal Railway corporation connected with the construction operation, \$35,000; and that was paid, Check No. 596. Who did that check go to? You paid it direct to Spooner & Cotton, didn't you? A. Paid it to Spooner & Cotton.

Q. Then their bill was rendered direct to you? Spooner & Cotton didn't render the bill to anybody, only you? A. They rendered it to the purchaser of the notes, but under our obligation to assure the expenses in connection with the financing.

Q. I think that means a bill rendered by Spooner & Cotton to the Brooklyn Rapid Transit Company. Of course, they say, To services as counsel for notes, but they make out a bill to you, don't they? You paid it direct to them? A. Yes.

Q. That is charged to the New York Municipal Railway corporation. What have they got it charged to? A. To Suspense and Construction.

Q. Was this litigation between the Brooklyn Heights? A. It is a lawsuit that grew out of the construction of this lease, which is in evidence — February, 1893.

Q. We have that in the record this morning. The Brooklyn City Railway Company is the owner of certain railroad properties that is operated under a lease by the Brooklyn Heights Railroad Company; and it is an elaborate lease and is marked as an exhibit.

Senator Thompson.— How much does that litigation cost? It

costs something like a hundred thousand dollars for lawyers' fees.
A. It costs more than that.

Q. (Mr. Schuster.) That litigation started back in '83 or something like that.

Senator Thompson.— Those accounts were all paid prior to 1909, those lawyers' bills? A. Not prior to 1909. These special bills, these big items you speak of, were paid when the litigation was wound up, and we collected this judgment.

Q. When was that? A. I think in 1913.

Q. What was that charged to? A. Profit and Loss.

Q. (Mr. Schuster.) There weren't any of those counsel that you paid that were counsel for the Brooklyn City Railroad people? A. Not if we know it.

Q. There is a real difference there. The Brooklyn City Railroad Company, the owners of that, are entirely distinct from the Brooklyn Rapid Transit Company. Mr. Woody.— Which don't own a share of their stock.

Mr. Schuster.— That is one of those lease propositions, where the owners of the property are outside of the circle.

Senator Thompson.— The lawyers for the B. R. T. act, then, just the same as they do when they come before the Committee here and find Cedarstrom on the stand.

Suspension until 2:30.

AFTERNOON SESSION.

The Committee came to order at 2:30 P. M.

MR. ABEL resumed the stand.

Examination by Mr. Schuster:

Q. Mr. Abel, are there not agreements with the Brooklyn Heights Company and the other corporations issuing certificates of indebtedness to the Brooklyn Rapid Transit Company, similar to the one introduced here this morning. between the Development Company and the — A. Not in all cases.

Q. With some of these there is no agreement at all? A. Not of that nature.

Q. Was it the practice of the Transit Development Company and the others, prior to the twenty-ninth day of March, one thousand nine hundred and seven, to issue these certificates of indebtedness? A. Yes, sir.

Q. That system started in 1902, when you issued the million five hundred thousand dollar mortgage? A. That system started with the refunding mortgage of 1902.

Q. So that at the time that this trust agreement between the Transit Development Company and the Brooklyn Rapid Transit Company was executed, in 1907, the development company had issued and sold to the Brooklyn Rapid Transit Company between thirteen and fourteen million dollars worth of such certificates? A. I believe so.

Q. And those certificates were for the first time secured under such an agreement mortgage? A. I think the idea was that that indenture might strengthen the security.

Q. And this indenture limits the amount of such issue to twenty millions? A. I think so.

Q. Can you state what other companies besides the Transit Development Company have a written agreement with the Brooklyn Rapid Transit Company with regard to this trust agreement? A. I think one of the companies that was merged into the New York Consolidated Railroad Company, namely, the Canarsie Railroad Company, gave a mortgage in substantially the same form as the one given by the Transit Development Company to secure its certificates of indebtedness.

Q. Do you recollect what the limitation on that was? A. No, I do not.

Q. This limitation of twenty millions of certificates, in the aggregate, only applies to those to be issued by the Development Company? A. Under the terms of that instrument.

Q. Now then, the only other limitation would be such limitations as would be specified in other agreements with the different companies? A. Well, it is a long time since I read that instrument, but I think it obligates the Brooklyn Rapid Transit Company to buy the certificates of the Transit Development Company up to an amount of \$20,000,000, and if the Transit Development

Company should want to borrow \$40,000,000 the Brooklyn Rapid Transit Company would have the right to make a new deal.

Q. But the only ultimate limitation on the amount of such certificates that may be absorbed or purchased by the Brooklyn Rapid Transit Company is the face amount of its note bonds remaining unsold at any one time? A. I don't see what relationship that has.

Q. Well, they can buy certificates of indebtedness up to a hundred million? A. They can buy certificates of indebtedness for an unlimited amount if they had the money.

Q. But in order to put them under the mortgage they couldn't exchange certificates for bonds to exceed a hundred million dollars? A. They could, but they wouldn't be apt to.

Q. Now, under the provisions of this development company's agreement, the Rapid Transit Company is limited in its exchange of bonds for certificates to the actual cost to the Rapid Transit Company of the acquisition of those certificates, or the purchase price. Is that the situation? A. The Brooklyn Rapid Transit Company can only issue its bonds to the extent of its actual expenditures.

Q. That is the actual cost of the Brooklyn Rapid Transit Company of acquiring its certificates? And that is true with regard to all the companies? A. Yes. So much so that although under the Public Service and Interstate Commerce regulations, we have the right to charge a salvage on the cost of construction where work is done say through such an intermediary as the Transit Development Company. We have never done so; so that no question could be raised that we were violating the terms of the B. R. T. mortgage.

Q. I want to know whether or not there is any part of these expenditures that are getting into the capital account through these certificates, showing which is tangible and which is intangible? A. Yes, sir, they are all classified.

Q. That is, classified so far as the Public Service corporation — A. Classified so far as the Transit Development Company is. It is done exactly as though it were to report to the Commission.

Q. Have you any records here that will show the aggregate amount of certificates held by the Brooklyn Rapid Transit Com-

pany, showing which part consists of intangible assets and which part is tangible? A. No, I have not.

Q. In order to arrive at that, we would have to study each certificate or the — A. You would have to summarize the detail of the certificates.

Q. Well now, in describing the property in the certificates which we have in evidence, **can you tell us what is filled in here** in this blank space — give us something that is typical of the most of those certificates? A. I can give you one that is filled out — that is. I will loan it.

Q. I assume that it is worth money. A. It will help to keep our files intact.

Q. I notice that in this certificate you include taxes under the classification of land. That is taxes that are paid out by the Development Company? A. That is in connection with the purchase of a piece of property, I presume.

Q. In connection with property known as Section 16, Block 5400, Lot 1. A. It wouldn't be a current tax. That might be an assessment of some kind.

Q. This was an assessment for a certificate? A. And that is in keeping with the Public Service Commission's classification of accounts of the railroad companies.

Q. Are these certificates in any way submitted to the Commission, or do they attempt to exercise, so far as the Public Service companies in your system are concerned? A. Those certificates are not submitted to the Commission, but all the detail that is embraced in those certificates is submitted to the Commission and in as great detail as the certificate itself.

Q. Is that done how frequently? A. Annually. In our annual report we give them the detail of all capital charges distributed according to their classification.

Senator Thompson.— The way you submit it to the Commission is by virtue of your annual report? A. In that form, from month to month, from quarter to quarter, then what has been charged to capital account by the increase of our assets as shown in the balance sheet.

Senator Thompson.— You don't have to get their approval on these? A. No, we do not.

Senator Thompson.—And don't as a matter of fact? A. No.

Senator Thompson.—So by means of this, you can increase your capital without the approval of the Public Service Commission? A. We can increase our capital for the time being. But if we charge anything into capital that is improper to the Public Service Commission, we can be required to come out.

Senator Thompson.—How can they do that? A. By criticizing our reports. In the detail that we furnished, you will find in some of the years, where the capital account has been credited with items of construction, because of the Public Service Commission's criticism. In their judgment they are not included as capital charges; but they were included from our standpoint. If the Public Service Commission rules otherwise, then we take our medicine and take them out.

Senator Thompson.—You do it by virtue of an assumed criticism of your annual report? A. We do it as the outcome of that.

Senator Thompson.—There is nothing in the Public Service Law that acquires them to approve or not to approve the annual report? A. I don't think there is.

Senator Thompson.—As far as the Public Service Commission Law is concerned, it strikes me that by that scheme you could increase your capital stock without applying to the public Service Commission. A. If we undertake to get the consent of the Public Service Commission every time we have to spend a dollar, we might just as well stop.

Senator Thompson.—That is what most of the companies do. Here is a company operating in Queens. They could hardly get along. In fact, they have had an application pending for several years before the Public Service Commission would approve it. A. I didn't know there was a Public Service Commission in Queens that was getting along.

Senator Thompson.—The Public Service Commission won't even authorize their capital, so they can't have any capital. But you organize the B. R. T. which is a holding corporation and you can issue a mortgage of a hundred fifty million without applying

to the Public Service Commission. A. Senator, we are not doing anything different since the organization of the Public Service Commission than we did five years before they were created.

Senator Thompson.— I appreciate that. But I just was commenting on what can be done.

Mr. Woody.— We didn't borrow the money to run these companies from the B. R. T. We would have to borrow it from some bank or trust company.

Senator Thompson.— But by your incorporating a holding company, that company can issue a mortgage for a billion if they want to, and the Public Service Commission hasn't anything to do with it. A. We might run into a proposition where we would have a deadlock with the Commission. We charge this prepaid interest under the subway contract the cost of construction. Mr. Schuster intimates that that is not a capital charge. We would have to thrash that out and stop work whilst it was determined.

Senator Thompson.— By this means you annul the provisions of the Public Service Law which requires the approval of the Public Service Commission on the capitalization. A. The Public Service Commission gives us the right to issue capital expenditures if the indebtedness doesn't run for more than a year.

Senator Thompson.— But by this means you can run it without the Public Service Commission.

Mr. Woody.— You overlook this — they prescribe the form of your accounts, the way you shall keep your books, and if you charge anything more to capital than you ought to, they can make you eliminate it and they do do it. That controls the capital — that is the capital which the public is interested in, as to what you shall earn on.

Senator Thompson.— You take your Suspense Account — A. We don't issue certificates for that.

Senator Thompson.— No, but you must have considerable Suspense Account. How much do you carry in your Suspense Ac-

count, under Construction "B"? A. We haven't anything but what has been shown in our reports to you.

Senator Thompson.—I understand that. But I want to know how much it was. A. Probably seven or eight hundred thousand dollars. It is made up of two or three items.

Senator Thompson.—Those are items that are there because you don't know what to do with them? A. We know where they belong under the Public Service Commission classification; but they don't happen to fit the terms of the subway contract.

Senator Thompson.—The only object of a Suspense Account is a case where there is an item that can be charged to one of two accounts, and you don't know which one to charge it to. Isn't that the only object of a suspense account?

Senator Lawson.—Isn't it suspended until the Public Service Commission through its Chief Engineer decides in the predeterminations as to where it really should be charged to? A. No, that would be true as to items that you can't allocate to any particular line, in which that was spread over the whole undertaking. But these items that the Senator was discussing are not in that category. These are items which are legitimate capital expenditures, and we have asked the Public Service Commission for a stock issue to cover those. But that won't affect the contract with the City — won't's affect the City's interest one particle.

Senator Lawson.—But eventually they will be charged somewhere. They won't remain in a suspense account forever, even though capital stock is issued. A. I suppose if stock is issued for them, then they automatically go into the Capital Account.

Senator Lawson.—Then they cease to be in the suspense account. A. This is an element that you are overlooking in this whole proposition — in this contract we have made with the City, we are amortizing in thirty-nine years, or undertaking to amortize the entire debt so that if the City wants to take over the lines, it takes them over without the expenditure of one dollar in thirty-nine years. So far as the cost is concerned, as to lines that are not

taken over, they will be amortized; and it is a degree of conservation in finance that I have never heard of.

Q. To pay for it in thirty-nine years is unusual in a thing of that character. A. We are doing it for the City too, and the City of New York gets a 50 per cent. participation in all our existing lines.

Q. (Mr. Schuster) The Transit Development Company sells power to your operating companies, does it not? A. Yes, sir.

Q. Are those power costs ever paid for in these certificates — do they ever get into any certificate? A. Oh, no, those are operating expenses.

Q. Now, when the Development Company constructs improvements, or one of the operating companies on its property, is the certificate issued by the Development Company for the expenditure or by the owning company? A. By the owning company.

Q. And does that certificate include the profit? A. There is no profit on construction.

Q. Well, you said the other day that it was charged 5 per cent. A. No, on maintenance; nothing on construction.

Q. No profit whatever on construction? A. No, sir.

Q. How about equipment? A. Same thing.

Q. You purchase equipment? A. And it goes in at actual cost.

Q. Do you turn over the equipment by actual transfer or under lease? A. There are some cases where the Transit Development Company owns rolling stock that is leased; but in the case that you first cited, where the Transit Development Company makes an improvement on property of a railroad company, that railroad company pays the Transit Development Company actual cost in cash, and the owning company forthwith reimburses itself through the issue of a certificate of indebtedness, which it sells to the B. R. T.

Q. What is its source of profit? A. The transit Development Company gets 10 per cent. on the manufactured cost of power to cover its depreciation, obsolescence, interest, or anything else; and its other source is 5 per cent. on the maintenance and upkeep of the railroad properties.

Q. And all that maintenance and upkeep is taken care of out of income? A. Yes, sir.

Q. Do they issue any certificates for money borrowed? A. They do not.

Senator Lawson.—Does the Transit Development Company own those power stations that generate the power? A. Some of them.

Senator Lawson.—That is separate from the operating companies? A. Separate ownership, but they are all operated in unison.

Senator Lawson.—I didn't know before that the Transit Development Company owned any part of these plants. A. In 1902, in connection with the development of property, we wanted a company that had no bonded indebtedness, so that that could give a certificate of indebtedness which would be a first lien on property, so that the Brooklyn Rapid Transit Company's bonds would be better secured than they would if the railroad company had to finance these big undertakings and give a third or fourth or fifty or sixth or seventh mortgage. It is a convenience rather than anything else.

Senator Lawson.—Are there many of those power stations owned by the Transit Development? A. The Williamsburg station and the central power station are owned by the Transit Development Company. Those are the two most modern stations. And they own some substations.

Senator Thompson.—Speaking of power—how do you make your power—by the same sort of a plant the Interborough has? A. We have some direct current stations, and we have some alternating stations.

Senator Thompson.—Do you generate your power from the steam turbine wheels? A. Yes.

Senator Thompson.—Have you got any excess capacity? A. At certain hours of the day, yes. But not as you mean it. That is, we haven't excess to sell to anyone else at the time of our maximum load.

Senator Thompson.— You have an off-peak capacity? A. Yes.

Q. But on the peak — you run your capacity of the plant to the peak? A. I say we have no excess capacity. We have some margin, so that if a machine gives out, we have another to take up the load. But I mean nothing beyond a reasonable factor of safety.

Senator Thompson.— Have you ever had an offer for the excess off-peak power? A. We have never been in the market to sell.

Senator Thompson.— Have negotiations ever been attempted to purchase it? A. No. I think there has been discussed the question of exchanging power with the Interborough, when we come over the Manhattan with some of our subway lines; but I don't know just the stage of those negotiations.

Senator Thompson.— Have you ever had any offers or representations from outside people to take up the question of purchasing your off-peak power? A. I don't think so, and I don't know that they would be entertained if we did. The Transit Development Company sells its power at the station, and it has no right to sell power through the streets.

Senator Thompson.— Suppose it came way over to buy it at the station. They would have a right to sell it from there, wouldn't they? A. I don't think our load fluctuates as the lighting companies load would; so that we would have an off-peak load for a long enough period of time to make it of any value to anyone.

Senator Thompson.— That wasn't my question. My question was whether there has been any offers or any suggestions that you ever heard of of anybody buying it outside. A. Not that I know of.

Q. I understand that your board of directors contains one of the directors of the electric light company, doesn't it? A. I don't know whom you refer to.

Senator Lawsón.— Mr. Brady.

Senator Thompson.— Mr. Wallace.

A. Yes, they are both our directors.

Q. (Mr. Schuster) Is all of the power used by the Brooklyn

Rapid Transit system manufactured by the Development Company? A. I was trying to refresh my memory as to whether we bought any from outside sources. I don't think in recent years we have bought any. There was a time seven or eight years ago when we had a shortage of power and used to buy it from the Edison Company; before the Coney Island Brooklyn was included in the Brooklyn Rapid Transit system, we used to sell power to them. I don't know that we ever bought any from them.

Q. What I mean is are any of these other operating companies furnishing power, or have you any such situation as is known as "jointly produced power"? A. We call it all jointly produced power, because that is what it is. The Transit Development Company's plants are pooled with the plants of the other companies and all operated collectively. And the agreement under which the power is manufactured provides for a pooling of the costs. Now, if any of the railroad companies that were obligated to furnish power, like the Brooklyn Heights was to the Van Brunswick, or to the Coney Island and Brooklyn, or to any other company at the time of this agreement, and that company's continued to supply power, it would do it simply as an agent of the Transit Development Company, and whatever it collected, it would account to the Transit Development Company for. If on the other hand any of the railroad companies should buy any power from an outside source it charges that cost to the Transit Development Company, so that the Transit Development Company takes up and reflects the whole transaction in its accounting to the constituent companies.

Q. Now in the setting up of the power account, you are not permitted under the rules of uniform system to include that profit as part of the charge, but that must be set up in some other account — the profit kept separate. A. The accounting classification doesn't make any such provision. So far as the individual companies are concerned, it pays so much for the power, and so far as it is concerned, its power is what is called purchase power, just the same as if you bought it from the Edison Company.

Q. You are dealing with the Transit Development Company; it is jointly produced power, but when you are dealing from an accountancy point of view with the accounting company, the public

service company, then it is purchased power? A. It is jointly produced inasmuch as the plants are concerned jointly in the production of it.

Q. What I am getting at, you are doubtless familiar with these rules. The Commission in its instructions seems to make a distinction in its requirement as to power purchased and jointly produced power. A. The Public Service Commission by its rulings can't change a contract that antedated its existence.

Q. So that these contracts all antedated its existence and for that reason you are not bound by these specific rules? A. No, sir.

Q. That is the reason why you don't conform? A. I think we do conform even at that. It is purchased power so far as the individual company is concerned.

Q. But you are familiar with this rule, that where the power is produced by another person or corporation for the joint benefit of the accounting corporation, that means the Public Service Corporation coming to the Commission and others under an arrangement sharing the expense of production, as distinguished from maintenance, a portion of such expense to be met by the accounting corporation to be charged to this account? A. That doesn't fit this case.

Q. Proportion so charged — this doesn't fit your case? A. It doesn't fit our case; and if the situation is such that however much we tried to follow that kind of a regulation, you couldn't comply with it. You couldn't segregate the element, and that seems to segregate it.

Q. Now, referring to the Liabilities Sheet, the General Balance Sheet for 1915, of the Brooklyn Rapid Transit Company, I find a classification entitled "Matured Coupon Account," which on June 30th, 1915, was set up as \$1,111,435. Just what does that mean? A. That is something that we have to give the Public Service Commission. In days gone by, before there was a Public Service Commission in New York State, when we paid a coupon we thought we were through with it — that is, when we deposited our money with the trustee of a mortgage we considered the transaction as closed. The Public Service Commission's idea is that your obligation isn't finished until you get the coupon. Therefore when the coupon to-day comes around, we have to set up in our books charging special deposits with the money to be paid to

the banker and crediting the matured coupon account. You will find on the other side an off-setting amount. I suppose the theory is that the depository might fail and the corporation would have to make good the loss.

Q. Do I understand that all of that sum has actually been paid — that is, the company has furnished the funds for the trustee to pay those coupons? A. That entry is not made until the money is actually deposited and then as from time to time the coupons are surrendered to us, those accounts are automatically reduced.

Q. Your accounts payable in the year 1915, June 30th, stood at \$2,273,521.51. A. That probably included the dividend. I think it so states in the balance sheet. It might not be stated in our annual reports, but that is undoubtedly what is in there, covered by a voucher.

Q. That would approximate how much of this? A. A little over a million.

Q. And the other current accounts payable? A. The other might represent interest to constituent companies on bills payable, and it might represent a voucher that has been drawn for interest on B. R. T. 5 per cent bonds.

Q. I notice you have a Bills Payable classification here of three million seven hundred odd thousand to banks and trust companies, and then to constituent companies \$7,000,725. A. Those are principally sums in respect to which interest would accrue.

Q. In an analysis of the corporate surplus account for 1915, this item of "Appropriations to Special Suspense," \$100,000, of 1913, \$100,000. What is that? A. What date is that?

Q. On June 30th, 1913. That seems to be the only year of the years that this balance sheet covers that that item appeared on the account. A. I don't know whether that is the hundred thousand dollars that was charged to Special Expense and then to Profit and Loss when we closed the books.

Q. Might that be the hundred thousand dollars of "Special Compensation" that was awarded to Mr. Williams? A. It may have been, and this trial balance may have been taken off before the books were finally closed by the year. That amount ascertained by Price, Waterhouse was charged off to Profit and Loss.

Q. And if this is that special compensation to Mr. Williams — if that was — that is what was done with it at the end of the fiscal year 1913? A. Yes, sir.

Q. I will now direct your attention to the Brooklyn Rapid Transit Company's statement of Income Account, the years 1909 and '15, which we have set up here in a comparative statement. I notice that in the year 1912, you have no charge for salaries and expenses of general officers. Whereas, in 1910, there is \$50,000; in 1911, \$30,000 odd dollars; in 1913, \$100; 1914, \$25,000; and in 1915, \$36,000. How do you explain that in 1912, there was no charge, and in 1913 practically no salaries and expenses of general officers? A. They probably didn't pay any.

Q. Do you recall whether during that year there was any such direction by the Board of Directors? A. I think that when Mr. Winter was President, the Brooklyn Rapid Transit used to pay his salary; but after he left the service of the company I think the constituent companies generally paid a part of Colonel Williams' salary as his successor, and probably the Brooklyn Rapid Transit Company didn't pay him anything.

Q. So that in those two years they contributed practically nothing to the general officers' salaries? A. That may be.

Q. And these amounts that are set up in the other years as the part of those general expenses of the whole system that the Brooklyn Rapid Transit Company had charged against it? A. In the subsequent years the Brooklyn Rapid Transit Company probably did pay something. I know that for a long time that the members of the Executive Committee didn't get any compensation, and latterly they have.

Q. These things have been regulated more or less by the company as it has prospered? A. I don't know what the actuating motive was.

Q. Is it a fact that in the system you make each part a proportionate share of these general overhead expenses? A. Each of the officers get a salary from the constituent companies, so that the aggregate will represent the proper compensation for that individual. Now we don't carry that program all through to the office boy, but other payments are distributed pro rata.

Q. Well, the aggregate of these salaries for general officers is

definite and fixed? A. Yes, sir, a statement of that has been furnished you.

Senator Thompson.—If all these companies were merged in one, how much would you save in overhead expenses? A. I don't know that you would save anything.

Q. Don't you have to have extra bookkeeping on account of so many companies? A. I don't think the bookkeeping is made on account of so many companies. The bookkeeping is made on account of so many regulations.

Q. (Mr. Schuster.) We are interested in your point of view on that. You come in practical contact with the effect upon your company of the requirements, etc., of the law or of the Commission by their rulings. And we will be glad to have your frank expression of it. A. To give you an illustration of what I have in mind, we have one room, and I think we have probably eight or ten clerks who do nothing else but figure mileage and car seat miles. Now, a car seat mile isn't worth the paper it is written on. It means that we have to keep the mileage of each individual car, give it a rating, multiply the mileage by the rating of the car, so as to get the number of car seat miles that are run. Now, if a car travels a certain route the seat may be occupied half a dozen times. It may traverse a certain other route and the seat may be only occupied once. So we are figuring car seat miles, and it is a meaningless proposition, but it is an order of the Public Service Commission, and we have to obey it.

Q. (Mr. Schuster.) Have you ever called the attention of any of the Commissioners to the uselessness — A. We have called their attention to the burdens, but that didn't relieve us.

Q. Whose attention did you call it to — the Commissioners' or the expert statistician's? A. The expert statistician, I would take that up with.

Q. But you have never gone before the Commission or laid before them in any concrete form how ridiculous a thing that is? A. No, but I think they have a well-defined idea of our views on the subject.

Q. Those rules in the main were devised for the Commissioners' approval and promulgation by their experts? A. The Commission authorizes the rules.

Senator Thompson.— Do they keep that up now? A. Yes, sir.

Q. (Mr. Schuster.) Is there any other thing you conceive of as being unnecessary in their requirements? A. I think the voluminous annual report that we have to make.

Q. How long does it take you to get up that report? A. You haven't seen the instrument?

Q. I know what they are. I have seen the Interborough. A. It is a regular Bible.

Q. I am familiar with the form, though I haven't seen your report. A. It is about ten times as laborious as the Interstate Commerce Commission report.

Q. Can you approximate, or do you know how many weeks it takes you to prepare that annual report? A. Well, I couldn't do that, because we are working on it all through the year. Whenever a clerk has any spare time, it is his duty to get ready a certain section of the annual report, to keep the data ready so that at the end of the year the report can be made within the limits that the regulations provide. And another thing, it comes at the time of year when clerks want their vacations, and it is a class of work that you can't put outsiders on. You have to have the trained clerks to get out the data, and the result is that they have to work over time, and we have to pay them for that over time. I suppose we pay them four or five hundred dollars in connection with the annual report in over time.

Q. And do you have to hire any extra help during the last three months of the year? A. Well, sometimes we do take on a couple of extra clerks in connection with the annual report; but they perhaps do something else. Their services in connection with the preparation of the report wouldn't be of very much account, but we can put them on some routine work and relieve the man who does know something about it.

Senator Thompson.— I have asked the Public Service Commission, and I will ask you, what do they do with those annual reports after they get them? A. I think they take all the statistics and reassemble them. And in a report the returns of the companies are then published in, I think, three volumes.

Senator Thompson.— That is three years after 1915, they get

up a report for that year. A. I think the last report we got was for 1913.

Mr. Schuster.— And is that report of any value to you at all in your work? A. Well, sometimes we refer to it and try to find something that will be of interest and we fail.

Q. Your experience is very similar to Mr. Gaynor's of the Interborough.

Senator Thompson.— The B. R. T. don't report to them. A. No, sir, the New York Municipal reports, and the New York Consolidated.

Mr. Schuster.— Do you believe that it is possible to get less effort on the part both of the Commission and the reporting companies, a system that will be uniform and still very much simplified? A. I think if the Public Service Commission would limit their exactions in the form of an annual report to the balance sheet and capital accounts and the operating statement without going into an endless amount of statistical data that isn't worth anything, it will be a relief all around. They call for statistical data such as these car seat miles, which is of no earthly value to us, and I don't see what value it is to them.

Q. Were you handling the affairs of the Brooklyn Rapid Transit's operating companies under the old Railroad Commission? A. Yes, sir.

Q. And you accounted to that Commission annually? A. Yes, sir.

Q. Did you find the accounting system under the old Railroad Commission more serviceable and more economic? A. Yes, sir.

Q. You were able to use their reports? A. We frequently report to the Railroad Commission reports to-day, antedating 1907.

Q. And have found them useful and valuable? A. Yes, we can find what we want.

Q. We have found that same experience among auditors of other companies? A. It took two or three years for a lot of our own people to understand what these definitions meant. You have asked about this Matured Coupon Account. I don't believe anybody outside of New York State knows what it means when they see it in the Balance Sheet.

Q. I confess I don't understand it. A. The average man sees the liability and he never looks on the other side to see the off-setting account.

Q. Do you know how much it cost your companies to comply with the Public Service Commission's regulations as to reports? A. I haven't the remotest idea. You see it not only affects our office, but it affects all—the other offices that we have to call upon for data. They want to know how many miles or feet of cable have been installed during the year, the size of the cable, the character of the wire, the number of poles.

Q. You wouldn't care to even approximately state the additional cost that it makes to your companies? A. No, I wouldn't.

Q. Do you think it is considerably more than you would if you had a less elaborate system and less exactions? A. Well, I should say that we could save \$20,000 a year.

Q. And still satisfy the publicity demand of proper regulation? A. I think so.

Q. Among the data which has been furnished us by Messrs. Price, Waterhouse & Company, in response to the Committee's letter of February 29th, 1916, we have here a statement which they have placed in various groups, Groups A to G, and which are designated as Expenditures by Authorization. Now, does that mean that these are expenditures under either Contract 4 or one of the allied certificates? A. This New York Municipal?

Q. Yes. A. Yes, sir.

Q. And this, I take it, covers your entire detail charges to expenditures under those certificates? A. Not our entire detail, no; but it covers the detail in that form.

Q. It covers in elaborate detail? A. But we furnished to the Chief Engineer of the Public Service Commission a copy of every voucher, a copy of every store-room order, a copy of every purchasing agent's order, and a copy of every journal entry that goes on the books. This is a sort of yearly summary that you have.

Q. But the detail down to the expenses is all furnished the Public Service Commission? A. Yes, sir, and as to labor, we furnish what we call a "Force Account"—that is a list showing by badge number and name and occupation and hours worked and the job that the man is working on, the amount charged to each one

of these authorizations which has first been approved by the Chief Engineer of the Public Service Commission before the work was undertaken, so that they can send men out in the field, and see that the men whose time we are charging is on the job — which they do. After they do that, they send men over to our office to check back these entries on the permanent books.

Q. Have all these matters been submitted for us in determinations as well? A. Yes, sir.

Q. And some of them have already been allowed in determinations? A. Everything up to the date of the last determination of the Chief Engineer, except some trifling exceptions of which we have given you the particulars.

Q. All these various schedules include all of the expenditures claimed by the New York Municipal up to January 31st, 1916, or simply the construction end? A. Yes, sir.

Q. It includes everything? A. Yes, sir. That is, in so far as the Contract Four — No. 4 — is concerned. That ignores these items which we have put in suspense in Construction "B" account, which we don't expect to ever include.

Q. Mr. Abel, in your testimony with regard to the statistical requirements of the Commission, had you in mind only the requirements that affect operation, or did it also include the vast amount of construction that you are now doing under your Dual Contracts? A. That is a separate story. This is an obligation of the contract, and the regulation of the Commission isn't included in my criticism.

Q. And you hadn't that in mind? A. I think it is a very onerous proposition, but that is what we agreed to in the contract.

Q. And all that you said in regard to the accountancy and statistical matters would be a fact even though there was no Dual Contract in existence? A. Yes, sir; because after the construction period is over, or after we have finished the construction, that is now under way, this will be reduced to a minimum, as far as the New York Municipal is concerned.

Q. I am now referring to your General Balance Sheet of 1913-15, New York Municipal Railway corporation, and I find in the years '14 and '15 under Miscellaneous Investments an item "Se-

curities from Non-Associated Companies," aggregating in '14, \$1,000,000, and in '15, \$1,005,109. What are those — from outside investments? A. The New York Municipal deposited City of New York corporate stock under the provision of its contract to the extent of a million dollars.

Q. So that is really a surety deposited under your contracts?

A. Yes, sir, to the extent of a million dollars.

Q. I understand you to say that your Suspense and other Suspense items do not contain any capital items chargeable to construction under the contracts? A. Well, I wouldn't say that, no. As to the items we have charged to Construction "B," that is so. But under Suspense in the Municipal Balance Sheet, there are a lot of items which are put there for the convenience of the Chief Engineer because they can't be specifically allocated to specific lines that the contract contemplates, and which will have to be distributed when the undertaking is completed and proportioned between the different lines, our own lines and the City-owned lines and the equipment of City-owned lines, and if we were to distribute them as we went along, they would have to be redistributed because the Chief Engineer wouldn't consent. We asked the Chief Engineer at the outset to agree on the principle for distributing those expenses and he demurred, because some lines might take longer than other lines, he would have to make a redistribution. I think they are shown in Group G on that tabulation. That applies to interest and superintendence and engineering and administration, and items that would apply generally.

Q. Does the Other Suspense Account have in it any items of actual addition to the property, of a physical nature? For instance, in your third-tracking there, you build your structure and lay your tracks and your overhead. A. That doesn't go in Suspense?

Q. None of that would get in with Suspense? A. No.

Q. And whatever there is in there in Expense is what would be fairly denominated and intangible capital? A. Not necessarily. If it is any of these items that are of a general nature and have to be distributed over the whole project, why I wouldn't call them intangible. The Administration Expense and the Superintendence

is just a part of a charge to tangible property as the time of the man working on the tract.

Q. Anything that has the nature of labor? A. Yes.

Q. Now, you have in one of your Suspense Accounts here, carry the Debt Discount on \$40,000,000 at 3 per cent.; then immediately following that, Expenditures of Brooklyn Rapid Transit Company covered by note. A. Those items in the latter class are the ones that we have been discussing, the bankers' commissions, and so forth, which don't come under all the contract.

Q. Does that include any of the so-called "prepaid interest?" A. That does not. That discount item which you have referred to is the 3 per cent. on the New York Municipal Bonds and that is taken up periodically by the chief engineers and is part of the determination.

Q. Now you have what you deonminate Other Suspense, the year 1914, debt discount undistributed, \$1,086,374.46. A. That is explained by the fact that in the first or second determination of the Chief Engineer, we took out of the Debt Discount Account and distributed to the different accounts that part which the Engineer had taken up in his determination; but when it was decided that he was going to redistribute, ultimately it was decided to throw that back into the Debt Discount Account so as to keep it all intact subject to redistribution finally in one transaction, so that we wouldn't be distributing and redistributing.

Q. Your so-called "Prepaid Interest" on the charge against the New York Municipal by the Brooklyn Rapid Transit Company is not included in that item? A. Yes, that goes not under that item. That goes in the Suspense item with all other interest payments that have to be distributed over all the lines and shown in this grouping.

Q. Where does that \$1,990,000 odd appear in the Statement here? A. It is probably included in that expenditure on leased lines. It may be in that item.

Q. Now, I find in those Other Suspense, the item Paid Kuhn, Loeb & Company for the account of Cravath and Henderson for special services, \$12,642.25, and also to other legal services here, these amounts are carried in suspense with the ultimate expectation

that they will become fixed capital items? A. No, sir. What date is that?

Q. That is June 30, 1915, the same as on June 30, 1914. It has been carried through. A. That twelve thousand odd dollars is carried in the Construction B account. We don't expect that to be included as part of the cost.

Q. And will get ultimately into the cost of construction? A. No.

Senator Thompson.— Why not? A. For the same reason that the bankers' commissions are not included.

Senator Thompson.— You mean that you haven't applied yet for it? A. We don't intend to apply for that.

Q. That is a good answer, but it has not yet been submitted to the Public Service Commission; you haven't applied for that yet, have you? A. If by that you mean submitted with the expectation of it going — no. We did send a copy of the voucher at the time it was passed. As I explained this morning, that was inadvertently charged to fixed credit and subsequently changed.

Q. If it shouldn't be charged to construction, it will be charged to capitalization, will it not? A. Yes.

Q. Now, shouldn't this be paid out of earnings? A. Not by any rules of accounting that have so far been laid down.

Q. You think it ought to be capitalized and you be permitted to earn on it, whether it is charged to the city or not? A. I don't see how we would be permitted to earn on it, because if it isn't charged on the city's contract, we would have no earnings to which — that we could apply.

Mr. Schuster.— Do I understand that your legal charges, you contemplate including those in a determination which would be fixed capital under the dual contract? A. We don't intend and never did intend to include those under the Contract No. 4. We did ask the Public Service Commission to sanction a stock issue to cover them, for the reason that they were capital charges.

Q. The Commission hasn't disposed of that? A. I don't know whether they have ultimately disposed of it or not.

Mr. Moss:

Q. I notice on the liability side of this balance sheet, you have a classification of other accounts payable and audited vouchers in the year 1913, which seems to be the only year in which that was carried. It is to the sum of \$1,358,000 odd. A. That may be coupon interest, I don't know. You see, if we drew a voucher, that would be represented as an account payable.

Q. I notice that the New York Consolidated Railroad Company's statement shows a certificate of indebtedness outstanding of fourteen million, five hundred eighty-eight thousand, one hundred thirty-four odd dollars, as of June 13, 1915. Is there an agreement between the New York Consolidated and the B. R. T.? A. No, sir.

Q. And those certificates are issued as a matter of practice rather than a formal agreement? A. Yes, sir.

Q. And it was one of the corporations that you contemplated assisting when you made your large mortgage? A. It was a consolidation of the Canarsie and Sea Beach and Brooklyn Union.

Q. Are these issued under the Canarsie agreement? A. Part of them.

Q. The balance under the general mortgage provisions? A. Yes, sir.

Q. And those are likewise, six per cent. interest-bearing certificates? A. Yes, sir.

Q. And are substantially the same as those in our record? A. Yes, sir.

Q. Those are likewise demand papers? A. Yes, sir.

Q. Is there any limitation at all on the amount of those certificates that the Brooklyn Rapid Transit Company can take by a resolution of the Board of Directors or anything like that? A. I don't think so. Of course, the New York Consolidated wouldn't be apt to issue very many now, because the additions in improvements are other property as well as the New York Municipal, and are provided for under Contract No. 4 and will be filed by the New York Municipal.

Q. Is it the contemplation that any of the proceeds of the sales of the sixty millions of bonds by the New York Municipal will be used to pay off these certificates. A. No, sir.

Q. And these certificates will, in all probability, continue on indefinitely as obligations of the New York Consolidated? A. Unless the New York Consolidated should find that it can sell a bond of its own on a more advantageous basis.

Q. I notice an item here, sinking funds uninvested, running through the various years. It seems to be largest June 30, 1915 — \$270,884.50. Those funds are available, of course, to you by the company in its ordinary operations? A. I think that is the depreciation fund that is provided for under contract No. 4, which is carried as a separate account.

Q. Is there any requirement that those funds be invested? A. Yes, there is a provision in the contract that they should be invested, and since that time they have been invested.

Q. So that that situation has changed since this statement was made up? A. Yes, sir.

Q. You have here the item of interest and dividends receivable, as of June 30, 1915, which was \$97,115. A. That is probably interest on bills receivable, advances made to the B. R. T.

Q. That wouldn't be true of the dividend part. A. No, but we have to follow these characterizations that are given us by the Public Service Commission.

Q. These are arbitrary classifications imposed upon you by the Public Service rules? A. You can term it that. If it is an interest item, it goes under that heading. If it is a dividend, it goes under that heading.

Q. I don't wonder that they have got you confused on interest and discount. A. They haven't got me confused on interest and discount.

Q. The New Consolidated Railroad Company invests also in the stocks of some of the associated companies of the system? A. I don't think they have.

Q. I notice upon your miscellaneous investments here, stocks of associated companies. A. I take that back. The New York Consolidated does own the stock of the New York Municipal. I think that is the single exception. About \$20,000, is it?

Q. Yes. On June 30, 1915, it was \$200,038.45 balance.

Mr. Schuster.—What of the associated companies have tem-

porary advances been made to? A. Brooklyn Rapid Transit Company.

Mr. Moss.—Is that surplus moneys that the Brooklyn Rapid Transit Company borrows that from? A. Yes.

Q. Do they pay interest? A. Yes, sir.

Q. What rate? A. Five per cent. They do that so as to put it out at a good rate, instead of loaning it to the bankers at three per cent.

Q. In your capital stock allowance, among the liabilities is a stock liability for conversion which in 1914 was \$79,000, and that was decreased to \$56,300 in 1915. What is the explanation of that? A. When the Canarsie and the Sea Beach and the Brooklyn Union were consolidated, the Consolidated issued its stock par for par of the three component companies' stock, and that item represents what you might term the non-assenting, unconverted.

Q. That is gradually being converted, I take it. A. Now it is very gradual.

Q. In your surplus account for the year 1914 to 1915, there was an item of the Brooklyn Heights Railroad Company, under the provisions stated July 1, 1901, of \$573,976.76. That seems to have been taken care of in that year. A. That is because the Brooklyn Heights at one time was a lessee of the Brooklyn Union, and there were a lot of taxes and litigation and a lot of unadjusted items that were finally wound up and then an adjustment was made and the debt was satisfied. That goes back to 1899, 1901, and up to 1907.

Q. The New York Consolidated Railroad Company has been earning and paying substantial dividends on its common stock for the years 1913, '14 and '15? A. Yes, sir.

Q. In 1913, they paid a preferred dividend of eleven per cent., 1914, seven per cent., 1915, ten per cent. What is the guaranteed annual dividend on that preferred stock? A. There is no guaranteed dividend at all. The rate of distribution now is ten per cent., but it isn't guaranteed and it isn't cumulative.

Q. There are no stated percentages of dividends? A. The common and preferred share equally after the preferred gets the first

five. That is pursuant to the terms of reorganization of the Brooklyn Union Elevated at the time of its foreclosure.

Q. The New York Consolidated Railroad doesn't manufacture any of its power at all? A. No, sir.

Q. Had you added to your lines or your equipment materially in 1914 over that of 1913? A. Not materially, no.

Q. I notice an increase of your power purchased in 1914 over 1913 of \$63,387. A. I wouldn't call that a material increase. The price of coal might account for that. Sometimes our power charges for coal alone vary twenty-five or thirty thousand dollars a month.

Q. So that there was nothing exceptional in the surplus? A. Since the Fourth Avenue Subway has been in operation, our consumption per care-mile has increased because of the larger units used. Of course, we have added the operation of the city-owned lines since 1913, the Center Street loop and the Fourth Avenue Subway, and that would increase the power consumption.

Senator Lawson.—Colonel Williams said there was a gentleman present the other day who can give us some information on this news-stand privilege question that was operated by your company. I think I see the gentleman over there. I wish at this time he would give the Committee the benefit of his knowledge, so that we may have it on the record.

(To Mr. Abel.) Can you give the Committee a statement as to how the news-stand privileges are operated by your Brooklyn companies, what privileges are given, what is paid to it, and just a brief resume of how you conduct the news-stand end of it in comparison with the Interboro method? A. We organized a separate company, called the Broadway Subways and Home Boroughs Company, to handle the advertising, and that company appoints its agents, its different news-stands and pays them a salary of a commission on the sales.

Q. Is that a subsidiary of the B. R. T.? A. The B. R. T. owns the stock of the Broadway Subway and Home Boroughs Company, and the earnings of the elevated operations are kept distinct from the earnings of the surface operations, and the surface revenues

are divided among the companies on a mileage basis, and the earnings of the elevated lines all go to the Consolidated. That is a slight inequality there, because some of the elevated cars operate over the Gravesend Avenue and the New Utrecht to Nassau. It is such a small element that when we made the contract, we didn't provide for all the accounting of those companies, but it is such a small matter that we don't know that we ever will.

Q. Do they maintain stands on the Center Street loop and Fourth Avenue, too? A. I don't know whether they have them on the Center Street loop or not.

Q. They have them on the platforms leading to the loop. A. They may have them.

Q. What is the status of those stands? Are they operated by a subsidiary corporation? A. Any news-stand on any of our lines, Broadway or subway, are operated by us.

Q. Has any provision been made with reference to the participation in the profits of the city-owned line with the city. A. That all goes into the pool now.

Q. Was there a contract made by the subsidiary company and the B. R. T. similar to a contract made between the Interboro and the Ward & Gow that you heard testified to the other day? A. No. This company handles the advertising and vending privileges themselves directly to the consumers, whereas the Interboro lets its privileges to Ward. That is the difference.

Mr. Woody.—In other words, we get all that there is made out of this.

Q. Do you contemplate that any part of the profit that is derived from the stands and the privileges on the city-owned properties shall eventually go to the City of New York?

Mr. Abel.—It goes into the pool in which the city is a partner, it doesn't matter whether it is advertising in an elevated car or on an elevated station. Every dollars that has been taken in of that nature goes into the pool in which the city participates.

Q. What are the charges to these various publications and magazines for the privilege of being displayed on these stands, do you know? A. That I don't know.

Q. Who does know? A. The man who has charge of the advertising would know that.

Q. Is there any restriction as to the size of the news-stands or as to the location? A. Those things are generally regulated by the necessities of the operating department. In days gone by, when we let the contract, we used to allot space to the advertising, with the reservation that we could curtail it at any time.

Q. But now, controlling your own company, you can do anything you please with it? A. Yes.

Q. Who can give us the information with reference to the charges that are made to these different publications, if any charges are made? A. I think Mr. Gunderson could, probably.

Q. We would like to hear from Mr. Gunderson so as to have our record complete.

Senator Thompson.—The adjournment of the session this afternoon completes one year's service of this Committee to the City of New York.

Intermission.

The witness is recalled.

Q. (Senator Thompson.) Is there anybody in the Public Service Commission that ever read one of those reports from one end to the other—that is, that is alive? A. I don't think anybody ever has read it through from end to end, because our examination is not made by a single man, it is parceled out to different men.

Q. Do you work it into any systematic form—into any result that you could take up and read and understand? A. Yes, the abstract of it is published in the Commission's printed report and contains the most essential information that is put in there.

Q. What you regard as essential. You compile it and boil it down. A. The idea is to boil it down and to omit details that are not regarded as absolutely—

Q. (Mr. Schuster.) What is the reason for asking for those details that you don't regard as essential? A. They are needed for the information of the Commission.

Q. In what particular? A. There may be something in there that wouldn't come up for five years, and then it might be of the utmost importance.

Q. Can you recall an instance of that character in your experience with the Commission? A. I know of it in the case of the application of the Dry Dock Company, Broadway and Battery Railway Company, for the sale, for the permission of the Commission to issue some refunding bonds; practically every scrap of information that was contained in the reports of the company to the State authorities was presented to the State engineers and later to the Board of Railroad Commissioners for the entire period of its existence was used. We found that the information that those reports contained with regard to the physical property of great value to show whether —

Q. The purpose of the report is that for usage in capital cases. Is that the idea of that report? A. That is only one purpose. But they are used in rate cases, and in service cases. There is not a week that passes in which we don't have some case with regard to service on some particular street car lines and counsel for the Commission wants information with regard to the number of cars, the number of passengers, the amount of traffic on those lines, and that information is derived from this annual report and from the monthly reports.

Q. Now Mr. Abel to-day was asked the question with regard to the utility and benefit of this system, and among other things that he mentioned in the requirements was a report on the car seat miles, condition of companies. What is the object of asking for that? A. I am preparing a statement to-day for the use of the Commission in regard to giving transfers between a surface line belonging to the Nassau Electric Railroad Company and the Subway line belonging to the City and operated by the Company as a part of the leased lines under Contract No. 4, in regard to the cost of passenger transportation relative cost of passenger transportation on the Nassau and on the Subway lines. Now our unit of measure, the most usual unit of measure of cost for transportation for street railways is the car mile, the cost to move a car one mile. But if you are comparing cars on one line which seat twenty people with cars on another line which seat sixty or eighty people your car mile cost is not a satisfactory unit. The seat mile however is a unit that affords a better basis of comparison.

Q. Doesn't the seating right with your car all the time? A. The seat goes with the car, and if you compile — let me give an

example: Supposing you have a car mile cost of twenty-five cents on two lines, and in one case you are running a fifty-seat passenger car and in the other case a twenty-five seat passenger car. Now the cost per passenger in those cases, in one case would practically be half the cost per passenger in the other, although the car mile cost is exactly the same.

Q. But what particular advantage is that knowledge either to the company or the public? A. Why it is absolutely necessary to make any analysis of your transportation costs of carrying passengers.

Q. Is it not the object of this statistical matter, and all of your statistical requirements to effect publicity of the corporate transactions? A. That is one of the objects.

Q. Isn't that the principal object? A. Yes, it is the principal object.

Q. Isn't it the paramount object? A. I should say it is the principal object. I don't think it is the exclusive object. Any statistician or accountant who wants to make an analysis of costs has got to have that information whether he is employed in the Commission or employed by some outside firm.

Q. What particular public benefit is such exact knowledge of the cost of the operation of the car? Wherein does that benefit the public either as an investor or otherwise? A. In any contest between groups of investors, where it is necessary to analyze costs, that information would be very valuable, and —

Q. How would that in any way affect the capital issue? A. It wouldn't necessarily affect the capital issue.

Q. How would it affect in any way the decision of a rate case? A. It would affect accounting between groups of investors, between some reorganization committee of bondholders, for example, which might have a claim on the profits for a certain period, and where there are leases of the bonds, the question of the profits arising under the lease is a question that has been before various groups of investors in the City very directly, and both the seat mile and the car hour and unit are used by accountants in making such analysis.

Q. Have you any statistics that indicate to what extent these annual reports and the other statistical matter required by your department are used by investors and bankers and brokers? A.

Why, we print a thousand copies of the pamphlet containing the summary of important reports, and those thousand copies are called for by bankers and investors and the public.

Q. And those usually average about two years in their publication after the report is filed? A. No, sir, the summary for the quarter ending in March has been published, was published, well, a week or two ago.

Q. You mean your bound volume? A. No, that is a quarterly pamphlet.

Q. How long have you been issuing a quarterly pamphlet? A. That was started, I think, in 1908 or 1909.

Q. How can you issue a quarterly pamphlet on an annual statement? A. The quarterly pamphlets are on the basis of quarterly report.

Q. Do you require in addition to the annual report a quarterly report? A. A quarterly report and a monthly report.

Q. As detailed? A. The monthly report is a four-page report.

Q. And what does that require of the corporations that are reporting to you? A. That requires a statement of revenue and operating expenses and the traffic data — on each, the earning and expenses for the entire company and the traffic data on each car line — each car line or route. The New York Railway Company, for example, operates some fifteen or twenty car lines or routes. We asked them to report the number of cars operated on each group, the number of car miles, the number of trips, the number of car seat miles, the number of passengers carried, the number of transfers given —

Q. Do they have to give you that car seat mile record every month? A. Every month.

Q. What is your quarterly? A. The quarterly is mainly a statement of financial condition — that is it contains the balance sheet, it contains the balance sheet and the summary of the income account.

Q. Now are there any other reports besides the monthly quarterly and annual reports required of these corporations? A. Those are the only ones required generally of all companies. There are some special reports required in particular instances — and there are some reports required by other departments. For example,

there is a semi-annual report as to cars purchased and cars retired, which is required by the Inspection Bureau; and there are account reports also required but I don't handle those.

Q. Are any of these companies required to report to you daily?

A. Some of them are required to report daily. The lessee of the City Subway reports daily as to the number of tickets sold on the subway and on each of the four elevated lines.

Q. That is the result of the Subway Contracts? A. I should say yes.

Q. And not as a matter of regulation? A. We use it for both purposes; but primarily it would come as a result of the municipal contract.

Q. Is this the most simplified workable form that can be devised for effective regulation? A. Yes, sir. I say that without any qualification that embodies the experience that we have accumulated in eight years. It is a smaller report than is required by the Interstate Commerce Commission of the steam railroads.

Q. What evils does that prevent in the way of corporate management and corporate capitalization from this? A. That is not susceptible of any specific answer further than it does give the facts and so far as the policy of publicity is to give facts, it may prevent evils in corporate management.

Q. Do the Commissioners ever read any of these reports? A. I don't know.

Senator Thompson.—I had supposed that we wouldn't have any more trouble of questioning of personality in this investigation. We remember that back in the Gillespie times that the people were asked to bring papers before the Committee attempted to tell the Committee who to send for the investigation. There were certain persons that they were not pleased to get the information to be brought to the attention of the Committee. I don't care particularly about ——— with the Mayor of the City, but when the Mayor of the City attempts to tell this Committee who they shall send to look at the public records in the City Hall, I think they have a right to disagree. To-day the Committee sent a man, one of the attaches of the Committee, to the City Hall to look through certain records, and the word came back that the Mayor would refuse to allow that particular man to

examine the records. I think that the Committee has the right to elect its own assistants, Mr. Chairman.

Senator Lawson.— I agree with that.

Senator Thompson.— Without interference even from the Mayor of the City. I am willing to move out of the City Hall when the Sinking Fund Commissioners want to meet in it. Now I want to subpoena the issuing in the morning of the records.

Mr. Schuster.— Dr. Weber, the investigation of the financing methods of the Brooklyn Rapid Transit system were before us to-day, and we find that while the Brooklyn Rapid Transit Company is not required to account or report in any way to the Public Service Commission, it dominates certain important public service corporations. Are you familiar with their methods of financing these public service corporations, particularly as to the issue of what they denominate certificates of indebtedness? A. Yes, sir.

Q. You have studied that system, have you, as they use it? A. I am familiar with it as it is in the reports.

Q. Are you familiar with the fact that those certificates of indebtedness while payable on demand will be likely to run for a long period of years unredeemed and unpaid? A. Yes, that is a fact.

Q. And are you familiar with the fact that those certificates are only issued for what are deemed fixed capital items, such as the acquisition of properties and the improvement of the facilities of corporations who issue them? A. That is my understanding.

Q. What supervision or investigation is made by the Commission or any of its departments in respect to the expenditures that are evidenced by these certificates of indebtedness? A. I don't know of any.

Q. Has the commission any power or control whatsoever over those expenditures and the setting up of those capital items? A. Yes, I think it has certain powers arising under the provision of the law which gives the Commission power to prescribe accounting procedure and to decide as to particular outlays or receipts, the proper classification of particular outlays or receipts.

Q. The only way in which these matters are brought to the attention of the Committee are through the annual report or some of the interim reports protecting those expenditures? A. That was true under the Commission's practice; no examination of books is regularly undertaken, but such examination is made only in connection with an investigation as to rates or as to the authorization of security issues.

Q. Are you aware of the fact that by the filing of the annual report and the correction of such criticisms as your department might make of such a report, after a given time, the company has deemed acquiescence on the part of the Commission? A. No, I don't think that follows.

Q. Are you aware that the companies themselves so conceive the situation? A. No, I am not.

Q. Are you familiar with the form of the certificate of indebtedness that they issue? Have you ever seen any of them? A. I don't recall at this moment.

Q. Well, I will show you form of certificate of indebtedness which is used by the Transit Development Company, a subsidiary of the Brooklyn Rapid Transit Company, and which Mr. Abel says is substantially the same as is used with all of the companies. Now, that certificate of indebtedness is a promise to pay just the same as a note on demand, is it not? A. Yes, sir.

Q. And that would be its legal effect, in your opinion, would it not? A. I don't know that my opinion is worth as much on a question of a commercial law.

Q. But on such an ordinary question we would expect an accountant to know something. But we will pass it over. Wherein is this different by the method employed than the issue of a bond secured by a trustee to a mortgage for a period of years or securing notes. You are aware, are you, that these are secured by mortgage? A. In some cases they are secured by mortgage but not in all cases.

Q. You know that all of these certificates of indebtedness that have been issued by the allies or subsidiary companies of the Brooklyn Rapid Transit Company have upon the acquisition by the Brooklyn Rapid Transit Company of those certificates been lost and pledged under its mortgage, its first refunding mortgage,

with the trustee of the Central Trust Company, and there held as collateral security for bonds which are issued for a like amount? A. That is true, but as to the security for the certificates themselves, it is not true that those certificates are secured by a mortgage on the property created with the moneys derived from the certificates.

Q. That makes it all the worse, then, doesn't it? A. Unless there is a mortgage to secure those certificates of indebtedness, the holder of the certificate, it doesn't seem to me, has got anything like the security that he would have if he held a bond, a mortgage bond.

Q. No, but so far as establishing a right to capital, isn't he by this method establishing a right to capital that is beyond the control of the Public Service Commission? A. That is true.

Q. And in actual effect, that is what is being accomplished through this method of certificates of indebtedness on the public service corporations allied with the Brooklyn Rapid Transit Company? A. It is, with this qualification, Mr. Schuster: That if a law should be enacted forbidding one corporation to hold stock in another corporation, the security of this indebtedness wouldn't be first-class, because it would have no mortgage security behind it. The security that they now have is through the stock controlled.

Q. Well, if the law were so framed that it would require the holding company, like the Brooklyn Rapid Transit or the Interborough Consolidated to report to the Public Service Commission, would it strengthen the situation? A. Oh, absolutely. No question about that. I am sure, if you will permit me to say, that I think that is one of the primary defects of the present law, in that it exempts holding corporations from the control of the public authorities.

Q. The Commission has known, or its department over which you are the head, has known of this process and taken care of the fixed capital expenditures on the part of the New York Consolidated and the other operating corporations of the Brooklyn Rapid Transit System for several years, has it not? A. Yes; it

denied the application of one of the subsidiary companies to make a mortgage to secure these certificates of indebtedness.

Q. On what ground — do you recall? A. On the ground that it would permit the company to issue an indefinite amount of indebtedness without the approval of the Commission.

Q. They are doing that now, are they not? A. They are doing it, but this indebtedness is not the security of a mortgage.

Q. But they get the same result and as a matter of actual fact, the holders of those certificates have just as good security as if it were a bond. Isn't that true now, just as a matter of actual fact and experience in that proposition? A. I don't think I can quite agree with that, because there is always a possibility of the enactment of a law forbidding one corporation to hold the stock of another, and in that case these certificates would be insecure.

Q. I am asking you about the fact today, not tomorrow. A. So long as the stock controls, they are.

Q. They set up these expenditures and charge them to their fixed capital account and report that to you or to the Commission? A. Yes, sir.

Q. And as we understand them, if you don't criticise it, you have accepted it and approved of it? A. That is an entire mistake. The Commission has never given any reason for that conclusion at all. Whenever a company makes application for consent to issue securities, the Commission goes back to the books, the original records, no matter what reports have been filed with the Commission.

Q. (Mr. Schuster.) It has the same effect so far as the approval of the capital issues are concerned except that they can't refund it today. But here is a certificate, protected in the hands of a trustee, under a mortgage that by its terms will run for a hundred years from its date. A. You have got your hand on papers, while you speak, of corporations which we have nothing to do with — one is the Transit Development Company and the other is the Brooklyn Rapid Transit Company.

Q. (Mr. Schuster.) They are able to finance and able to establish a record of fixed capital through a period of years that inevitably the courts will recognize, I believe.

Dr. Weber.— And there is also this point — that any thorough-going checking of capital expenditures should be made contemporaneously with the expenditures. There should be an inspection of the property.

Q. Dr. Weber, both Mr. Abel, the auditor of the Brooklyn Rapid Transit System, before this Committee, and Mr. Gaynor before the Sub-committee, have testified that in substance this annual report is of no value of them and it is at large cost that they provide it; that in their opinion, the old system of reports required by the old railroad commission was far more adequate as a medium of publicity than this, and far more useful to them as a working tool. In fact they tell me they don't use these, whereas they still use the others. A. In that sense, they use this just as much as they use the others. The fact is those companies all have in their own files monthly reports that give, so far as operation is concerned, what we call information every year annually.

Q. What have you that you give to the public as large that is of any value whatsoever as a result of this vast accumulation daily, monthly, quarterly and annually, from these corporations, as far as publicity is concerned? A. We give publicity —

Q. I am trying to get something that is of use to the man who wants to invest on his own judgment, and not the man who is going to buy a vast amount of securities examined by experts. What benefit to the ordinary small investor that he can use his own judgment in the study of it to determine whether he wants to buy a share of stock or a bond of any public utility corporation under your supervision? A. The average small investor usually looks at revenue and expense and especially net profits. We publish every month a statement showing the earnings, the operating expenses and divided between maintenance and other operations, and the taxes and the resulting net surplus of every company listed. That monthly summary contains the information that the average investor will want and that is available from our files within a few weeks after the close of each month. If the investor wants further detail that appears in our quarterly pamphlet, an eight page pamphlet, which contains the balance sheet, the statement of the finan-

cial condition. Then if he wants to go still further and have reports prepared by experts, he has got to use the annual report. Now those are published in printed form where the man can get at them; and if he wants the very latest results, which is not usually the case, because a period of five or six years, even if it doesn't include the last year, is sufficient; he can get it by coming to the office as a great many of them do come there to consult the reports that have not yet been printed.

Q. How many come there to the office on the average to consult your reports? A. There would be several a week.

Q. What do you mean by several? Do they average one a day? A. Very nearly. But the point is that if we didn't publish these monthly and quarterly statements, there would be a great many required.

Q. How many copies of those monthly reports do you circulate? A. There is one thousand copies circulated.

Q. Is there a mailing list? A. There is a mailing list containing banking houses, investment houses —

Q. Is that mailing list kept up from year to year by a special request on the part of these banking houses? A. I don't handle that mailing list and I couldn't tell you.

Q. You don't know anything about the detail of the distribution of those reports, then, do you? A. No, I don't follow it from month to month. Requests for these pamphlets frequently come to me and I simply direct them to be placed on the mailing list.

Senator Lawson.— Well now, Dr. Weber, as an expert for the Public Service Commission, I show you the annual report of the New York Consolidated Railroad Company for the year ending June 30th, 1915, and I will read to you on pages 30 and 33, and ask you to give me an explanation of how anyone reading this report would glean any information as to who received this commission:

Under disposition of Stocks and Bonds of the Brooklyn Union Elevated Railroad Company, Stocks and Bonds Outstanding, the year 1915, it reads: "Purposes for which stocks and bonds were issued — preferred stock." Then on the fourth line it says, "Is-

sued under reorganization plan for commission, \$500,000." Now, \$500,000 worth of stock of the Brooklyn Union Elevated, was issued to someone apparently in payment of the commissions for reorganization work. Does this report show who that \$500,000 was issued to? A. We can't get into an annual report all the particulars as to the security of the revenues from the very beginning of the company. If you did you would have a volume several times the size of this. All that we ask for it is whether the securities were issued for cash for property or for services or other considerations.

Senator Lawson.—That doesn't quite answer my question. That report shows to the Public Service Commission that somebody received \$500,000 as commission. Now it doesn't show who got the \$500,000. It doesn't show for what it was issued, except it says, "Issued under reorganization plan for cash, second mortgage and commission." Now it is very essential to a prospective stockholder who wants information as to the details of a report of that railroad to know for what these stocks were issued. If it was issued for a commission there ought to be some place in the report to show in detail what was done to earn this \$500,000 of stock. Don't you think so? A. That might be true for the year covered by the report, but you understand these securities were not issued during this year, but before.

Senator Lawson.—All right. What does the Public Service Commission do when it gets a report showing that there was stock issued in payment of commission? Do they ask for the information outside of the report? A. In the first place, no securities can now be issued without the consent of the Commission, and only upon the conditions imposed by the Commission. One of the conditions asserted in all of its orders is a requirement that reports shall be made of the use of the proceeds and those reports are in detail.

Senator Lawson.—Now, can you tell us, Doctor, under that report, can you turn to any part of the report and show this Committee who received that Commission of \$500,000, what it was is-

sued for and what compensation or consideration was given to the Brooklyn Union Elevated Railroad Company for the \$500,000 worth of stock? A. No, because that would be foreign to the purposes of the report. These securities were issued years and years ago, and you wouldn't expect —

Senator Lawson.— I don't so consider. This is a disposition of stocks and bonds of the Brooklyn Union Elevated, when the New York Municipal Railroad Company was organized. That is evidently what the report intends to convey. That is of recent origin. A. This sheet represents the entire capitalization of the New York Consolidated Railroad, and that includes bonds that were issued in 1899 and even in 1896, and stock that was issued undoubtedly since the organization of this company, in about 1896. Practically all of these securities have been outstanding for fifteen years.

Senator Lawson.— If the average investor wants to know anything pertaining to that item, how does that investor go about seeking that information? A. He would have to go to the report for the year in which those securities were issued.

Q. What is the idea of recapitulating that same amount of statistics year after year in an annual report that something has happened two or three or four years prior to the report itself? What good is it to the Public Service Commission? What good is it to the investor? What good is it to the public generally to have that information about a public utility corporation? A. I think any investor would like to know how much of the bonds or stock of a corporation has gone for cash, how much of those securities have gone for profit, how much have gone for some other consideration.

Senator Lawson.— The Commission is not concerned then in what has been issued for commissions in the work of reorganization? A. No, our question here is this: Here is a schedule of stocks actually issued prior to the present year, first par value; secondly, the cash received as a consideration for the issue; third, the cash value of other property; fourth, cash value of services received as a consideration; and fifth the net discount. This

sheet is intended to give that information in such form as the company has it.

Q. (Mr. Schuster.) They will have to give it every year hereafter, will they not? A. Yes.

Q. That same information? A. That is true.

Q. What is the excuse for that, Doctor? You have got that in your office once; you keep on asking for that same information year after year. A. Do you think it is necessary to impose upon the investor the burden of going through the reports and adding this up year by year, when a few minutes of time on the part of a clerk can insert it in the annual report?

Senator Lawson.— I know, but you impose it as a burden upon the company.

Mr. Schuster.— It isn't a question of a few minutes of time. A corporation is keeping men at it constantly.

Dr. Weber.— That is not one of the things that they are keeping men at.

Mr. Schuster.— If you have, before you start in with the first report of your company, the data there for that year, if you receive in the next year simply the accounts of that year, it is a very simple matter for your experts who are employed by the year to make up a report by adding that data themselves. Why should you require the corporation to reiterate year after year the same facts with the added facts of each year, and then it comes into your office and you go through the same regime yourselves and republish it to the world at large again in the same form. What particular good and advantage is it? A. Because anybody who takes one of these reports expects to find that information there. As a matter of fact that is one of the things that has been handed down by the old Railroad Commission.

Mr. Schuster.— Isn't it possible for you to get up a report by taking what data you had in 1915 and adding to that report what you received that modifies your 1915 report by reason of current transactions in '16 and so on, each subsequent year, and in

that way you have an organization there that is big enough to take care of this.

Dr. Weber.— That wouldn't be the report of the corporation.

Mr. Schuster.— This isn't the report of the corporation that you issue; it is a compilation of that report.

Dr. Weber.— When these documents are taken into court as original documents, that is a matter of information that ought to be found in the report.

Mr. Schuster.— How often are those taken into court? A. We have perhaps a couple of cases a month.

Mr. Schuster.— You have a couple of cases a month. Do you mean the Public Service Commission? A. I mean where they are called for by subpoenas.

Q. In what character of litigation? A. There have been a great many calls for them in connection with the reorganization of the surface lines here in Manhattan, the litigation between various companies and groups of investors, and there are occasionally calls for them in personal jury suits.

Q. This question of capitalization wouldn't cut any figure in a negligence action, would it? A. No, that is true.

Senator Lawson.— They are largely minimized now under the Workmen's Compensation Act, aren't they? A. So far as the street railways are concerned the negligence actions are rather brought by the outside public than by employees.

Senator Lawson.— Now in conclusion I just want to say this: My inference from reading this report would lead me to believe that at some time or other a railroad company, not this particular railroad company, but any railroad company, might reorganize, change their legal title and they might issue to a banking firm or an individual or anybody who will take part in reorganization, a half a million dollars of the stock of the company and there would be no more details for the Public Service Commission or for the average investor than is contained in this report carried from year to year, of a half a million dollars issued for commissions. That

is my inference from it, and it seems to me that the reports to the Commission might be more specific in detail, because it is very essential that companies are not milked or mulcted for large sums of money in reorganization plans.

Mr. Schuster.— The trouble and complaint is that it is too detailed.

Senator Lawson.— It is too detailed in directions that are not requisite and in other directions it is not detailed enough.

Dr. Weber.— Each individual has his own interest. He would like to see the report developed in certain directions.

Adjournment to Saturday, June 24, 1916, at 10 o'clock.

COPY OF EXHIBIT 4.

Paid Dec. 21, 1911, Office of Treasurer.
Brooklyn Rapid Transit Co.,
85 Clinton Street,
Brooklyn, N. Y.

Office of General Counsel.

December 20, 1911.

Mr. Howard Abel,
Comptroller.

Dear Sir:

Will you please prepare voucher for two thousand dollars to Philip J. Britt, retainer in the action of the Admiral Realty Co. against the Bradley Contracting Co. and Wm. J. Gaynor, et al., by the Brooklyn Rapid Transit Co. to assist Mr. Conway, counsel for the Bradley Contracting Co. in said action. *Please send voucher to us.*

Yours very truly,
G. D. Yeomans,
General Counsel.

(Copy.)

N. S. 359.

5M. 4-3-11. O—65806.

To Philip J. Britt, Dr.

1911.

Dec. 20. For amount as per bill attached..... \$2,000.00

Retainer in the action of Admiral Realty Co. against Bradley Contracting Co., William J. Gaynor et al.

Paid Dec. 21, 1911, Office of Treasurer.

Vouchered Dec. 21, 1911 — Comptroller.

O. K.—M G P, 6-9-13.

(Copy.)

		LAW DEPARTMENT.
		Date,
	Checked by	
	Charge O. K.	.....
Charge	Correct	Date,
Subways		.....
H. A.		Date,
	Correct	.....
		Date, 12-20-11.
		George D. Yeomans,
		General Counsel.
Approved for Payment,		
T. S. W.		
.....		
	President	

Brooklyn Rapid Transit Co.

To Philip J. Britt, Dr.

1911.

Dec. 21. Retainer in the action of Admiral Realty Co. against
 Bradley Contracting Co., William J. Gaynor et al.,
 \$2,000.00.

Paid Dec. 21, 1911, Office of Treasurer.

O. K.—M G P, 6-9-13.

Paid Dec. 21, 1911, Check No. 1100,

Long Island Loan & Trust Co.,

H. A.

(Copy.)

Entered — Folio 457-C.

Vouchered Dec. 21, 1911 — Comptroller.

Received Dec. 21, 1911 — Office of Treasurer.

Audited,

I. P. Devereux,

Auditor of Disbursements.

Approved for Payment,

.....

Vice-Pres't and Gen. Mgr.

Approved,

Howard Abel,

Comptroller.

(Copy.)

No. 1100.

New York City, Dec. 21, 1911.

Long Island Loan & Trust Company,

Borough of Brooklyn.

Pay to the order of Philip J. Britt two thousand & 00/100 dollars (\$2,000.00.)

Brooklyn Rapid Transit Co.

\$2,000.00/100.

Howard Abel,

Comptroller.

W. J. O'Neill,

Ass't Treasurer.

Not over two thousand dollars (\$2,000.00.)

(Copy of reverse side of check.)

Pay Long Is. L. & Tr. Co., Brooklyn, N. Y., or order, endorsements guaranteed. First Nat'l Bank, N. Y.

Philip J. Britt.

(Reverse of Voucher.)

Brooklyn Rapid Transit Co.

1911. Voucher No. 4120. Dec.

Amount, \$2,000.00.

In favor of Philip J. Britt.

T. C. R.

12-21-11.

Subways, \$2000.00.

Verified with

Dec. 21, 1911

Daily Cash Statement

COPY OF EXHIBIT 5.

(Copy of Check.)

No. 1435.

New York City, Aug. 21, 1912.

Copy.

Long Island Loan & Trust Company,
Borough of Brooklyn.

Pay to the Order of Charles A. Collin.....

Three thousand, eight hundred & 00/100.....Dollars

Brooklyn Rapid Transit Co.,
C. D. Meneely,
Treasurer.

\$3,800.00/100.

A. P. Clausonthue,
For Comptroller.

T

(Copy of Reverse of Check.)

Pay to the Order of Nassau National Bank,
Brooklyn, N. Y.

For Deposit.

Charles A. Collin.

The Hanover National Bank
Of The City of New York.

1-33

Elmer E. Whittaker,
Cashier.

Copy.

Nassau Nat'l Bank of B'klyn.

Paid

Aug.

22

1912

3d Teller.

N. S. 359.

5M. 4-3-11. O—65806.

B. R. T. Co.

To Charles A. Collins.....Dr.

Aug. 20 for special legal services in Admiralty Realty
case, in the Ryon case and the Hooper case to
test the constitutionality of Brooklyn Union
El. preferential in Subway matter.....\$3800.00

MGP

Paid

6-11-13.

Aug. 21, 1912

Office of Treasurer

Vouchered

Aug. 21, 1912

Comptroller

A P C

Law Department

Checked.....Date

Charged.....Date

Correct.....Date

8-21-12

Correct,

Approved for Payment

Audited

I. P. Devereux,

.....

Auditor of Disbursements.

T. S. W.

Approved,

A. P. Clausonthue,

For Comptroller.

Brooklyn Rapid Transit Co.

To Charles A. Collin Dr.

1912.

Aug. 20. Bill rendered for special legal services. \$3,800.00.

M G P

6-11-13

Paid

C D M

Aug. 21, 1912

8-21-12

Paid

Check No. 1435.

Aug. 21, 1912.

L. I. L. & Tr. Co.

Office of Treasurer.

Indexed

Folio 340 ES.

Vouchered

Aug. 21, 1912

Comptroller.

Received

Aug. 21, 1912

Office of Treasurer.

Approved for Payment.

Audited, I. P. Devereux,

Auditor of Disbursements.

.....

Vice-Pres. & Gen. Mgr. Approved,

.....

Comptroller.

(Copy of Reverse.)

Brooklyn Rapid Transit Co.,

1912. Voucher No. Aug. 4723.

. Amount, \$3800.00.

In favor of Charles A. Collin.

Subways, \$3800.00.

Cha. 8-21-12.

COPY OF EXHIBIT 6.

New York Municipal Railway Corporation,
85 Clinton Street, Brooklyn, N. Y.

Voucher No. C May, 115

T 2063

Date May 26, 1914.

Statement of Account Covered by This Voucher-Draft.
1914.

May 26. For services rendered in the matter of litigation affecting the Dual System Rapid Transit Contracts \$2,500.00

This check must be presented at bank within 15 days.

Payable
from
Account " B "
8144

Copy

Accepted

Payable at Merchants' National Bank through New York Clearing house, Central Trust Company of New York.

(Signed) M. Ferguson,
Secretary.

This Voucher-Draft, when duly certified by the Comptroller and signed by the Treasurer, is payable at the office of Central Trust Company of New York, when receipted and endorsed as per notice below.

Certified,

(Signed) Howard Abel,
Comptroller,

Dated May 26, 1914.

(Signed) C. D. Meneely,
Treasurer.

Received of New York Municipal Railway Corporation, the sum of \$2,500.00.

Two thousand five hundred 00/100 dollars in full of the above account.

Morgan J. O'Brien,
By M. J. O'Brien, Jr.

NOTICE.—The above receipt must be dated and signed by the person, firm or corporation in whose favor this Voucher-Draft is

made, or, when signed by another, the authority for so doing must in all cases accompany the signature. In the case of a corporation this Voucher-Draft must be signed by an authorized officer of the company.

(Reverse of Voucher—Page 1.)

For Deposit in
Equitable Trust Co.
To Account

Morgan J. O'Brien.

Pay to the Order of Hanover National Bank, New York.
Endorsements Guaranteed. The Equitable Trust Co. of N. Y.
Copy.

H. M. Walker, Treas.

Received Payment, New York Clearing House, May 27, 1914.
Hanover National Bank.

The Equitable Trust Co. of New York.
Paid.

City Collection Dept., May 27, 1914.
The Equitable Trust Co. of N. Y.

New York Municipal Railway Corporation.
85 Clinton Street, Brooklyn, N. Y.
W-H

May 25, 1914,

Office of President.

Mr. Howard Abel,
Comptroller.

Dear Sir.—Noting the attached correspondence and resolution of our Executive Committee to-day, please pass New York Municipal Voucher in favor of Hon. Morgan J. O'Brien for \$2,500.00 and send it to me for transmission.

Yours truly,

(Signed) T. S. Williams.

Encs.

President.

Cash " B "

(Copy.)

Resolution adopted by Executive Committee of the New York Municipal Railway Corporation on May 25, 1914.

Paid

May 26, 1914

Office of Treasurer

Resolved, that the officers be and they hereby are authorized to pay to Hon. Morgan J. O'Brien the sum of twenty-five hundred dollars (\$2500.00) as this Company's share of a five thousand dollar (\$5000.00) fee, assumed jointly by this Company and the Interborough Rapid Transit Company for services rendered by Judge O'Brien in the matter of litigation affecting the Dual System Rapid Transit Contracts.

Vouchered

May 26, 1914

Comptroller's

No. May, 115

Copy.

New York Municipal Railway Corporation Voucher No. T 2063
85 Clinton Street, Brooklyn, N. Y. C. May, 115

Date, May 26, 1914.

To Morgan J. O'Brien:

(Statement of Account covered by this Voucher-Draft.)

1914 For services rendered in the matter of litigation affecting the Dual System Rapid Transit Contracts \$2,500.00

Paid May 26, 1914

Received May, 26, 1914

Office of Treasurer

Office of Treasurer

Chargeable to:— Construction " B."

Amount, \$2,500.00.

COPY.

Audited

(Signed) DeF. P. Rudd,

Auditor of Disbursements.

Approved,

(Signed) C. D. M.,

Vice-President.

(Rush.)

(Copy of Reverse.)

New York Municipal Railway Corporation:

Month of May, 1914, No. May 115.

Amount, \$2,500.00.

COPY.

Construction "B" \$2,500.00

Verified with May 26, 1914.

Daily Cash Statement.

 COPY OF EXHIBIT 7.

 New York Municipal Railway Corporation. Voucher No. C. Oct.
 179, T 696

Date November 7, 1913.

To Kuhn, Loeb & Co.,

52 William St., New York City.

(Statement of Account Covered by this Voucher-Draft.)

1913 Bill rendered by Messrs. Cravath & Hender-
 Aug. 6 son for professional services and disburse-
 ments in connection with the issue and sale
 of \$40,000,000. Six-year 5 per cent. Se-
 cured Gold Notes of Brooklyn Rapid Tran-
 sit Company under agreement with Central
 Trust Co. of New York, dated July 1,
 1912 \$25,284.49
 Our proportion — $\frac{1}{2}$, \$12,642.25.

 2111 CITY COLLECTION DEPARTMENT
 COPY.

This Voucher-Draft, when duly certified by the Comptroller and
 signed by the Treasurer, is payable at the office of Central Trust
 Company of New York, when receipted and endorsed as per notice
 below.

Certified

 (Signed) Howard Abel,
 Comptroller.

Dated Nov. 13, 1913.

 (Signed) C. D. Meneely,
 Treasurer.

Received Nov. 14, 1913, of New York Municipal Railway Corporation, the sum of \$12,642.25.

Twelve Thousand Six Hundred Forty-Two and 25/100 Dollars in full of the above account.

Kuhn, Loeb & Co.

Notice:—The above receipt must be dated and signed by the person, firm or corporation in whose favor this Voucher-Draft is made, or, when signed by another, the authority for so doing must in all cases accompany the signature. In the case of a corporation this Voucher-Draft must be signed by an authorized officer of the company.

(Reverse of Voucher-Draft.)

PAID

11-17-13 .

Pay to the Order of Cravath & Henderson, Kuhn, Loeb & Co.

For Deposit, Pay to the Order of
The Equitable Trust Co. of N. Y.,
Cravath & Henderson.

The National City Bank of N. Y.
Paid.

E. T. Co. of N. Y., 2nd Teller, Main
Office.

Pay to the Order of Hanover National Bank, New York. Endorsements Guaranteed.

The Equitable Trust Co. of N. Y.,
Walker, Treasurer.

The Equitable Trust Co. of N. Y.
Paid.

New York Municipal Railway Corporation,
85 Clinton Street,
Brooklyn, N. Y.

W-H

Office of President.

November 5, 1913.

(Copy.)

Mr. Howard Abel,
Comptroller.

Dear Sir:

Please note attached bill dated August 6, 1913, to Messrs. Kuhn, Loeb & Company from Cravath and Henderson for \$25,284.49, in connection with the issuance and sale of \$40,000,000 six-year five per cent. secured Gold notes of the Brooklyn Rapid Transit Company.

With the approval of our Executive Committee we have agreed to pay one-half the amount of said bill, namely — \$12,642.25, and please have voucher passed therefor.

While originally this was a B. R. T. charge it will eventually be paid by the New York Municipal Railway Corporation, and I see no objection to having that corporation pay it directly, if counsel approve.

Yours truly,
(Signed) T. S. Williams,
President.

O. K.— G. D. Y. But not out of bond proceeds.
Enc. CDM.

Mr. Abel.— When the voucher is ready for transmission please send it to Mr. Otto H. Kahn, c-o Kuhn, Loeb & Co.— TSW.

New York, August 6, 1913.

Messrs. Kuhn, Loeb & Co.,

To Cravath & Henderson, Dr.

Purchase of \$40,000,000 six-year five per cent. secured gold notes of Brooklyn Rapid Transit Company issued under its trust agreement with Central Trust Company of New York, dated July 1, 1912.

To professional services in connection with the above. 25,000.00
Disbursements.

Printing	\$108.69
Extra stenographic services (nights)	139.75

Telegrams, telephone tolls, messengers, filing fees, carfares, etc.....	36.05	
		284.49
		<u>\$25,284.49</u>

Approved for \$12,642.25. See T. S. W.'s correspondence with Mr. Otto H. Kahn, of Kuhn, Loeb & Co.—T. S. W.

O. K.—DeF. P. Rudd.

(Copy.)

New York Municipal Railway Corporation,
85 Clinton Street, Brooklyn, N. Y.

Voucher No. C. Oct. 179. T. 696.

Date November 7, 1913.

To Kuhn, Loeb & Co.,

52 William Street, New York City.

Statement of Account Covered by this Voucher-Draft.

1913.

Aug. 6. Bill rendered by Messrs. Cravath & Henderson for professional services and disbursements in connection with the issue and sale of \$40,000,000 six-year five per cent. secured gold notes of Brooklyn Rapid Transit Company under agreement with Central Trust Co. of New York, dated July 1, 1913..... \$25,284.49
Our proportion — one-half 12,642.25

Paid Nov. 13, 1913, Office of Treasurer.

Received Nov. 11, 1913, Office of Treasurer.

Chargeable to: Auth. 41 C-4.

Group: G H.

H. Amount, \$12,642.25.

Paid Nov. 13, 1913, Office of Treasurer.

S.

Audited,

(Signed) DeF. P. Rudd,

Auditor of Disbursements.

Approved,

(Signed) T. S. W.,

President.

(Copy of reverse of Voucher-Draft.)

New York Municipal Railway Corporation.

Verified with.

Month of October, 1913. No. Oct. 179.

Amount, \$12,642.25.

Nov. 13, 1913.

Daily Cash Statement

G. Suspense (Groups A. to E., inclusive)..... \$12,642.25

(Copy of Journal Entry.)

Journal Entry: New York Municipal Railway Corporation.

COPY.

February, 1914.

Construction "B."

\$12,642.25

Fixed Capital subsequent to Jan. 1, 1909. Auth. 41 C-4.

Transfer Voucher October 179 from Fixed Capital to Construction "B" Account.

COPY OF EXHIBIT 8.

Brooklyn Rapid Transit Company,

Treas. No. 595

85 Clinton Street,

Brooklyn, N. Y.

To Joline, Larkin & Rathbone,

54 Wall Street,

New York, N. Y.

Comptroller's No. April 13.

Registered by W. H. F.

This check must be presented at bank within 15 days.

(Copy.)

1913.

Apr. 12. Your bill of April 1, 1913, rendered Central Trust Company of New York (for itself and associates), as follows:

All services rendered under or in connection with contract between Brooklyn Rapid Transit Company on the one part and your company and others on the other part evidenced by letters dated June 10, 1912, and including all services rendered to Central Trust Company of New York as trustee in respect to matters connected therewith \$50,000.00

This voucher, when duly certified by the Comptroller and signed by the Treasurer, is payable at the Mechanics Bank of Brooklyn, N. Y., when receipted and endorsed as per notice below.

Certified,

(Signed) Howard Abel,
Comptroller.

Dated Apr. 14, 1913. (Signed) C. D. Meneely,
Treasurer.

Received Apr. 15, 1913, of Brooklyn Rapid Transit Company, the sum of fifty thousand (\$50,000) 00/000 dollars in full of the above account.

Joline, Larkin & Rathbone,
By John Ferguson, Jr.,
Cashier.

Notice.—The above receipt must be dated and signed by the person, firm or corporation in whose favor this voucher is made, or, when signed by another, the authority for doing so must in all cases accompany it. In the case of a corporation this voucher must be signed by an authorized officer of the company.

(Copy of Reverse of Voucher, Page 1.)

Pay to the Order of The Mechanics and Metals National Bank
of The City of New York.

Joline, Larkine & Rathbone

(Copy.)

Received payment through New
York Clearing House, 4 Apr. 15,
1913 4

Mechanics & Metals National Bank,
New York.

New York, April 1, 1913.

Central Trust Company of New York (for itself and its associates)
To Joline, Larkin & Rathbone, Dr., .

No. 54 Wall Street.

All services rendered under or in connection with Contract between Brooklyn Rapid Transit Company on the one part and your company and others on the other part evidenced by letters dated June 10, 1912, and including all services rendered to Central Trust Company of New York as Trustee in respect to matters connected therewith, \$50,000.

Note:—A memorandum of disbursements in connection with the matter will be furnished when printing bills, &c., have been received.

COPY

Brooklyn Rapid Transit Co.,
85 Clinton St., Brooklyn, N. Y.

Office of the President.

April 7, 1913.

Mr. Howard Abel, Comptroller.

Dear Sir:

I enclose herewith bills from Messrs. Joline, Larkin & Rathbone for \$50,000 and from Messrs. Spooner & Cotton for \$35,000 in the matter of services rendered to the Central Trust Company, Messrs. Kuhn, Loeb & Company and Messrs. Kidder, Peabody & Company, bankers under the agreement of June 10, 1912, together with letter of transmission from the Central Trust Company.

I also enclose transcript from minutes of meeting of the Executive Committee of the B. R. T. Co. today approving these bills.

Please consult with Mr. Meneely or myself as to the time of payment.

Yours truly,

(Signed) T. S. Williams,

COPY

President.

Transcript from Minutes of Executive Committee, B. R. T. Co.,
April 7th, 1913.

Bills were laid before the committee from Messrs. Joline, Larkin & Rathbone and from Messrs. Spooner & Cotton, representing services of counsel employed by Central Trust Company, Messrs. Kuhn, Loeb & Company and Messrs. Kidder, Peabody & Company, Bankers under the agreement of June 10, 1912, the bills being transmitted for payment on behalf of the Bankers by the Central Trust Company of New York, and, on motion duly made and seconded, it was

Resolved, that the bills of Joline, Larkin & Rathbone for \$50,000 and that of Spooner & Cotton for \$35,000, on account of the services above described, be approved and ordered paid.

(Copy.)

Central Trust Company of New York.

54 Wall Street, April 4, 1913.

Brooklyn Rapid Transit Company,

85 Clinton Street.

Brooklyn, New York.

Dear Sirs: We enclose herewith bills received from Joline, Larkin & Rathbone, Esqrs., and Spooner & Cotton, Esqrs., representing services of counsel employed by us and our associates in the matter of Note Agreement of your Company, and we forward them to you for payment under our agreement with you.

Very truly yours,

G. W. Davison,
Vice-President.

Copy.

Brooklyn Rapid Transit Company.

Jeline, Larkin & Rathbone,

April 13 54 Wall Street,

W. H. P. New York, N. Y.

1913 Your bill of April 1, 1913, rendered Central Trust

Apr. 12 Company of New York (for itself and associates), as
follows:

Paid

Apr. 14 1913

Office of Treasurer.

All services rendered under or in connection with Contract between Brooklyn Rapid Transit Company on the one part and your company and others on the other part evidenced by letters dated June 10, 1912, and including all services rendered to Central Trust Company of New York as Trustee in respect to matters connected therewith \$50,000.00

Payment authorized by letter of President, dated April 7, 1913, enclosing Transcript from Minutes of Executive Committee, B. R. T. Co., April 7, 1913.

(Check 595.)

Fifty Thousand. 50,000.00

Received 00

Apr. 14, 1913

Office of Treasurer.

Vouchered

Apr. 12, 1913

Comptroller's

No. Apr. 13

C. D. M.

Audited,

(Signed) D. F. P. Rudd.

Auditor of Disbursements.

Reverse.

N. Y. Municipal Ry. Corp'n.

1913. Voucher No. Apr. 13.

Amount \$50,000.00 \$50,000.00.

To Jeline Larkin & Rathbone.

Verified With Apr. 14, 1913.

Daily Cash Statement.

COPY OF EXHIBIT 9.

Treas. No. 596.

Brooklyn Rapid Transit Company.

85 Clinton Street, Brooklyn, N. Y.

To Spooner & Cotton.

Comptroller's No. Apr. 14.

Registered by W H F

1913.

Apr. 12 Professional services as counsel for the purchasers of notes of the Brooklyn Rapid Transit Company under Trust Agreement dated July 1, 1912, in regard to mortgages and contracts of the New York Municipal Railway Corporation, the New York Consolidated Railroad Company and the Brooklyn Rapid Transit Company connected with the construction and operation of the proposed new rapid transit railways.....\$35,000.00

Copy

This Check must be

Presented at Bank within

15 days.

This Voucher, when duly certified by the Comptroller and signed by the Treasurer, is payable at the Mechanics' Bank of Brooklyn, N. Y., when receipted and endorsed as per notice below.

Certified,

Howard Abel,

Comptroller.

Dated Apr. 14, 1913.

C. D. Meneely.

Treasurer.

Received April 15, 1913, of Brooklyn Rapid Transit Company, the sum of \$35,000.00.

Thirty-five thousand00/100
in full of the above account. Dollars

NOTICE.—The above receipt must be dated and signed by the person, firm or corporation in whose favor this voucher is made, or, when signed by another, the authority for doing so must in

all cases accompany it. In the case of a corporation this voucher must be signed by an authorized officer of the company.

Spooner & Cotton,
.....

(Copy of reverse of Voucher.)

For deposit — Spooner & Cotton.
(Copy.)

Received payment through New York Clearing House, Apr. 15, 1913, Guaranty Trust Co. of New York.

New York, April 3, 1913.

Purchasers of Notes of the B. R. T. Co.
To Spooner & Cotton, Dr.

Professional services as counsel for the purchasers of notes of the Brooklyn Rapid Transit Company under Trust Agreement dated July 1, 1913, in regard to mortgages and contracts of the New York Municipal Railway Corporation, the New York Consolidated Railroad Company and the Brooklyn Rapid Transit Company connected with the construction and operation of the proposed new rapid transit railways \$35,000.00

Received payment,
Vouchered Apr. 12, 1913. Comptroller's No. Apr. 14.
Received Apr. 8, 1913, Office of Comptroller.
(Copy.)

Brooklyn Rapid Transit Company,
Spooners & Cotton.

1913.

Apr. 12. Professional services as counsel for the purchasers of notes of the Brooklyn Rapid Transit Company under Trust Agreement dated July 1, 1912, in regard to mortgages and contracts of the New York Municipal Railway Corporation, the New York Consolidated

Railroad Company and the Brooklyn
Rapid Transit Company connected with
the construction and operation of the
proposed new rapid transit railways.. \$35,000.00

Received Apr. 14, 1913, Office of Treasurer.

Payment authorized by letter of President, dated April 7, 1913,
enclosing Transcript from Minutes of Executive Committee, B.
R. T. Co., April 7, 1913, thirty-five thousand (\$35,000.00), dol-
lars.

(Check 596.)

(Copy.)

CDM.

Audited,

DeF. P. Rudd,

Auditor of Disbursements.

(Reverse.)

Brooklyn Rapid Transit Co.,
1913 Voucher No. Apr. 14.

Amount, \$35,000.00.

To Spooner & Cotton.

Received with Apr. 14, 1913, Daily Cash Statement.

(Copy.)

(Miscellaneous Accounts.)

New York Municipal Railway Corporation..... \$35,000.00

JUNE 24, 1916.

The Committee came to order at 11:30 A. M., Senator Lawson
presiding, Senator Thompson acting as Counsel.

Testimony of Paul C. Wilson.

MR. PAUL C. WILSON, Assistant Secretary to Mayor Mitchel,
being called as a witness, testified as follows:

(Mr. Wilson is sworn by Senator Lawson and takes the stand.)

Senator Thompson.—Mr. Wilson, what is your connection with
the Mayor's office?

Mr. Wilson.— I am Assistant Secretary to the Mayor.

Q. (Senator Thompson.) And the Mayor is out of town today?

A. (Mr. Wilson.) No, I don't understand he is out of town.

Q. Is Mr. Martin, the Mayor's Secretary, out of town? A. Mr. Martin is Executive Secretary to the Mayor, and he is out of town.

Q. And Mr. Rousseau is out of town? A. Yes, Mr. Rousseau is out of town.

Q. Well now, there are some papers over at the City Hall that this Committee desires to examine. Now, it isn't a question of figures nor accounts nor of books; but some papers that I want to examine. And this Committee hasn't ever had enough appropriation to hire more than one man along a particular line—and we only have one expert accountant, for instance. But the papers that we desire to examine over at the City Hall do not call for the services of an expert accountant; it calls for the services of a man whom we have in the Committee, and happens to be a Mr. Kline. Now, yesterday the Committee asked Mr. Morse and Mr. Kline to go over to the Mayor's office to examine these files and open some. And we understand there was a refusal on the part of the Mayor to permit Mr. Kline to examine papers. Now, it is necessary for the business of this Committee; the particular motive is that should we publish what we want to otherwise it will probably be of no avail—that requires these papers to be examined by Mr. Kline. And the Chairman of the Committee would avail himself of the kind invitation of the Mayor to personally visit and perform that task if he only had the time; but I really can't find the time to do it, and preside at the Committee hearings and take charge of the other matters that have to come before us. So if the Mayor won't permit Mr. Kline to go there, well, we will have to ask the mountain to come over here. A. Ask what?

Q. We will have to ask that the files be brought over here, so that they can be examined here. Because I think it is for the public interest that these files be examined. Now, I appreciate the situation that you are in, being the only one in charge of the

City Hall today — and I want the Administration to think this over, as far as that is concerned. But Monday morning I'd either want the files produced before the Committee so that we can examine them — which we will appoint a sub-committee for, the same as we did for the Gillespie papers, and which examination Mr. Kline will take charge of, the same as Mr. Morse did in that case. Or else, which would be much more convenient for all concerned, allow Mr. Kline to examine the records over there. And I wish you'd get in touch with the Mayor, and on Monday morning appear and produce the files. Of course, we can't make you — we realize that we haven't any power to force our meetings into the Hall of Records, or the City Hall. It is only a matter of convenience.

Now, that is the situation, unless you are ready to produce the papers here this morning. A. Your subpoena was served about 10:30 or 10:35, and called for appearance at 11 — which was less than a half hour in which to search the files in the basement of the City Hall for the correspondence requested. It is obviously impossible to go through three or four years' files in twenty-five minutes or less. There are, however, papers here which were, I am informed, secured from the files by your representatives Thursday afternoon. Your representatives are there in the file room today, at this moment — at least they were when I left the City Hall — searching for presumably these, or other papers. The papers I have here are those which, as I say, were secured from the files Thursday afternoon by your representative, I believe Mr. Morse or his assistant.

(Witness hands papers to Senator Thompson.)

Senator Lawson.— Are those all the letters mentioned in the subpoena that you can find? A. As I have stated, inasmuch as the men representing your Committee and accompanied by a representative of the Mayor's office searched Thursday afternoon and this morning, this was all that they had found up to the time I came over here.

Senator Thompson.— Well, I don't know whether this Committee has got the prerogatives or not, but the Committee wants

Mr. Kline to examine those records, and I don't think we will change our idea unless it is proved that Mr. Kline is untrustworthy. I have noticed a statement that the Mayor gave for publication this morning, in which he said that he did not allow Mr. Kline to come because he did not trust him. This is a public matter. We are a public committee, sitting in the interests of the public. We have asked to send one of our appointees to attend to a public building and examine public files. And the Mayor, a public officer, gives a public statement to the effect that he does not trust this man. Under the circumstances, it is a matter that concerns the public, and I think the Committee is entitled to the facts there — what the facts are. If he don't trust him, tell the public his facts. If it is a private matter, that is another thing; and I hope the Mayor won't take the position that he is entitled to use his public office in relation to a private spite that he might have. We can't, and don't do that. And this is a matter of far more importance than any personal matter that might come up, I assure you of that. And if we really didn't feel that the public was interested in what we were trying to ascertain from these records, we wouldn't bother with the situation at all. And we haven't time to sit as a committee for the purpose of handling any particular personal matter that might exist between these two gentlemen. But it isn't a matter where we can use the services of an expert accountant. I thought I could at first, and I can't. And I find that when we send Mr. Kline after anything, he gets it. Now, if that is the reason why he is foreclosed from examining these files, I'd like to know it.

Mr. Kline.— Was that a statement made to the newspapers, or to the Committee?

Senator Thompson.— Well, it hasn't been made to the Committee yet, so I won't put it on the record.

(To witness.) So I wish you'd attend Monday morning, and either produce the records that we want, so that they may be examined or — well, that is the only order we have got a right to make, I think, Mr. Chairman.

Senator Lawson.— Is that all you want?

Senator Thompson.— I think that is the only order we have a right to make.

Mr. Wilson.— In other words, a continuance of this same subpoena is called for?

Senator Thompson.— Yes.

Senator Lawson.— Well, if you will do that, Mr. Wilson, we will excuse you now until Monday morning, and then you can visit the Committee on Monday morning, if the Mayor is willing to have you.

Mr. Kline.— Mr. Chairman, are you aware of the fact that the Mayor has issued a statement affecting me as far as my work with the Committee is concerned or otherwise, and has given it to the newspapers? I asked the Chairman of this Committee to direct the Mayor, or to ask the Mayor, to appear before this Committee and explain the basis of allegation for his statement. It is a public statement now, whether it is made to this Committee or to the newspapers. I ask the Mayor for an explanation before this Committee.

Senator Lawson.— Well, the Chair will issue an invitation to the Mayor to appear Monday morning, through his Secretary, Mr. Wilson, and make any explanation that the Mayor may choose to make of his attitude in this matter. Mr. Wilson, if you will convey the Committee's invitation, the Committee will appreciate it.

(Mr. Wilson leaves the stand.)

Testimony of Edward Thimme.

MR. EDWARD THIMME, Executive Secretary of the South Brooklyn Business Men's Association, appearing as a witness, testified as follows:

(Mr. Thimme is sworn by Senator Lawson and takes the stand.)

Senator Thompson.— I used to be Chairman of this Committee, Mr. Chairman, and whenever I noticed a new counsel appearing, I always commented on it and scared him off. And I just simply suggest that to you.

Senator Lawson.—Mr. Senator, if you want to read the early part of the record, why you will find that the Chair has commented on it.

Mr. Kline.—Mr. Thimme, you appear here as Secretary to the South Brooklyn Business Men's Association?

Mr. Thimme.—I do.

Q. (Mr. Kline.) With correspondence that you had with the Public Service Commission? A. (Mr. Thimme.) Yes.

Q. Will you read the correspondence. A. (Letter read by Witness):

“BROOKLYN, *June 6, 1916.*

“Secretary, Public Service Commission of the First District, 154 Nassau Street, New York City.

“Dear Sir:

“At a special meeting of the South Brooklyn Business Men's Association the Board of Directors was instructed to inform your honorable body that it had been decided to make the following public demands especially at this time as the business and living conditions instead of showing an improvement are showing a continuing tendency of growing worse.

“We, therefore, respectfully ask you for fullest information regarding the matters, what co-operation may be had at the hands of your honorable body, and what suggestions of a general nature you can offer us to make these, our demands effective in the shortest possible time.

“The demands to which this organization is committed are the following:

“The long-promised but never-given five-cent carfare to Coney Island;

“The reduction of the price of electricity, say, from 11 cents per kilowatt hour to three cents;

“The reduction of the price of gas, say, from 80 to 50 cents;

“Cutting telephone rates in half.

“We understand that your honorable body has full authority to bring about these most desirable and necessary, and in the end inevitable, changes; and we consider that the

public welfare could not be better looked after than by expediting these measures with all possible speed.

"We dislike to take any decided, drastic and far-reaching steps in these premises until we have heard from your honorable body, as we should like nothing better than to offer you our most vigorous co-operation to bring about these, the changes indicated.

"Kindly appreciate, therefore, the necessity of replying to these queries at your earliest opportunity.

"Very respectfully,

"THE BOARD OF DIRECTORS,

"per Edward Thimme,

"Secretary."

This is the answer we received on June the ninth, nineteen hundred and sixteen:

June 9th, 1916.

"Edward Thimme, Esq., Executive Secretary,

"South Brooklyn Business Men's Association,

"311 Court Street, Brooklyn.

"Dear Sir:

"I am in receipt of your letter of June 6th, stating that in the view of the directors of your association, business and living conditions are growing worse and that consequently they have decided to make a number of demands for drastic reductions in the charges of public service corporations. The answers to the several demands to which you state your organization is committed, are as follows:

"1. '*The long-promised but never-given five-cent carfare to Coney Island.*'—So far as any action or any statement by this Commission is concerned, there has never been any promise of a five-cent fare to Coney Island, excepting that contained in the contract known as Contract No. 4 of the City of New York, by the Public Service Commission, with the New York Municipal Railway Corporation. That contract provides that when through operation from Manhattan to Coney Island is possible over the New Utrecht Avenue and

Gravesend Avenue branches of the 4th Avenue subway, the fare to Coney Island shall be five cents. There is still a large amount of work to be done upon these, so that it will be some time before the five-cent fare to Coney Island will go into effect.

"2. '*The reduction of the price of electricity, say, from 11 cents per kilowatt hour to three cents.*'—By an order of this Commission, the New York Edison Company has made a substantial reduction in the price of electric current per kilowatt hour, and there is now pending a case involving the price of electricity by the Edison Electric Illuminating Company of Brooklyn.

"3. '*The reduction of the price of gas, say, from 80 to 50 cents.*'—The Commission has recently passed an order requiring a reduction in the price of gas by four of the gas companies in Queens county from \$1.00 to 95 cents and from \$1.00 to 85 cents per thousand feet. The rate in most other parts of the city is now 80 cents.

"4. '*Cutting telephone rates in half.*'—The telephone and telegraph companies are not under the jurisdiction of this Commission but are under the jurisdiction of the Public Service Commission for the Second District. It is a matter of record that the telephone rates have been substantially reduced by orders issued by that Commission.

"You are in error in assuming that this Commission has authority to bring about conditions which you desire. The law confers upon the Public Service Commissions in this State authority to fix rates, but the rates fixed must be reasonable and justified by the cost of production and the financial condition of the companies producing. All its acts are reviewable by the courts and in nearly all important cases decided, appeals have been taken by the companies. In many instances the action of the Commission has been upset by the decisions of the courts.

"Very truly yours,

"JAMES B. WALKER,

"GFD—MS.

"Secretary."

(Letters offered in evidence as Exhibit 1, 24-8-16.)

Q. (Mr. Kline) Have you inquired into electric rates charged in other cities? A. We have.

Q. Will you tell the Committee what you have learned in that regard? A. I have written out a short statement.

Q. Read the facts with regard to the matter.

Senator Lawson.—Wait a moment, now. Can't you ask your questions and let the witness answer them from his statement rather than read that long statement.

Q. (Mr. Kline) That does your investigation show, without regarding your document? A. The investigation shows that the rates charged generally by public service corporations of New York City are unreasonable, and in comparison to other cities, are extortionate.

Q. What cities have you in mind? A. I have in mind Cleveland, Ohio; Tacoma, Washington; Pasadena, California; as far as the price of electricity is concerned.

Q. Are the electric rates in those cities fixed by the municipality? A. They are.

Q. And is the electric current furnished by the municipality? A. They are in these cities; yes, sir.

Q. What are the rates in those cities?

Senator Lawson.—What are the rates in comparison with the rates in New York City? A. The rates in New York City are from eleven cents downward to four cents.

Senator Lawson.—What are the rates in these cities? A. The rates in these cities are — In Pasadena, California, five cents; in Cleveland, Ohio, three cents; also in Louisville, Kentucky, three cents. Between the latter two cities there is this difference: In Cleveland, Ohio, three cents; also in Louisville, Kentucky, three to its business men and residents, at three cents per thousand cubic feet; while in Louisville, Kentucky, it is a corporation that does it. And the facts show that in Cleveland, particularly, the cost of the production, cost of electricity, is less than a cent, and the cost of distribution, one cent. So that even at the charge of three cents, there is still a considerable profit. Now, the fact that in Louisville, Kentucky, a private corporation is furnishing elec-

tricity at three cents per kilowatt hour, shows that there must be a profit at that figure, even for a private concern — because no corporation would think of furnishing public service free gratis, for nothing. It never has been that way.

Q. What is the rate in Tacoma? A. In Tacoma, the city of Tacoma sells electricity for cooking purposes as low as one cent per kilowatt hour. While Jacksonville, Florida,— that is another one of the cities — has a two-cent rate for cooking and heating.

Q. Are those rates that you mentioned the rates to small consumers or wholesale consumers? A. They are for all.

Q. Small consumers? A. Yes.

Q. What is the retail rate for small consumers in the city of New York? A. Anywhere from 11 cents —

Q. About 11 cents? A. Yes. If a large amount of electricity is used, it tapers down to 8, 6, and 4 cents.

Q. But the rate for the small consumer is 11 cents, you say? A. Eleven cents. Yes. That is the rate it begins at. And this organization consists of small business men, and they feel the competition very keenly.

Q. They feel that they are discriminated against with regard to rates? A. Yes.

Q. By the electric companies? A. They claim for instance, that the large stores, department stores and others, are given the four-cent rate because they use, of course, a very large amount of electricity. And we claim that if it is profitable to sell electricity at four cents, why, the small business man is discriminated against merely because the corporation is in a position to sandbag him — if he don't want to pay it, why he can go without it; he can use gas or anything else.

Q. You ask this Committee to inquire into the reasons for this discrimination in electric rates in this City? A. Yes.

Q. That is what you are here for? — One of the reasons that you are here? A. That is one of the reasons, yes.

Mr. Klein.— That is all, Mr. Chairman.

Senator Thompson.— Do you know how they generate their electricity in Cleveland? by water power or by steam? A. That

I don't know. We didn't look into that. We just took the mere facts as they were found.

Senator Thompson.—This matter has been inquired into by another committee of the Legislature, of which I happened to be Chairman. There is a great difference in the cost of production, as to whether you use water power or whether you use steam. There is also a great difference in the cost of production as to how you generate—in what quantities you can generate your steam power. You take generation by steam with the ordinary boiler and engine, why, it costs a great deal more than to generate steam power by means of the turbine engines in large quantities, that they use here in the City. I think that per kilowatt the cost of generation here is about forty-three one-hundredths (43-100) of a cent per kilowatt—perhaps forty-five (45-100). A kilowatt is a horse power and a third. So that if you reduce that one-third it gets you about thirty one-hundredths—somewhere along there, the cost here to generate by steam. That would mean about \$20 to \$25 for 10,000 horse power, the cost of production here. Now, you can produce it by water power for half of that. They do it in Niagara, they do it at Winnipeg, they do it at Ottawa, they do it along the St. Lawrence, wherever there is water power. And it is a subject that requires a great deal of study; and the difficulty with it all is that the ordinary consumer of electricity doesn't understand his contract. He don't know what he gets for the money, nor what he gets, nor whether it is in horse power; and the ordinary merchant, manufacturer, the man who uses power in large quantities, he really don't know what he is getting for what he pays. He don't know the difference between a horse power, kilowatt—sometimes he don't know the difference between a watt and an ampere or a volt. The terms are technical, and they are perfectly simple when you understand them, but consumers don't understand them. Now, that is the situation.

Mr. Thimma.—But all our members look at it from the business point of view.

Senator Thompson.—That is true, you may. The difficulty largely lies in the fact that when electricity was first used commercially, it was used for lighting, and the largest use came in the

lighting time of the day. Consequently it took all the energy and all the ability of the company, all the supply of electricity, to supply the demand at that time of the day. The consequence from that was that the largest price was charged for lighting — because they had the energy at the other times of the day for which there was no use; and so the largest price was charged for the lighting. That was the way it started. But as the industry developed, and as the uses to which electricity has been put have increased, the demand now comes at different times, and the large demand comes late in the afternoon and late in the forenoon. But they haven't changed the question of the large price for the lighting and the small price for the power — one cent for power, and eight cents for lighting is a very heavy discrimination, and it falls on the class of men that you represent.

Mr. Thimme.— Exactly.

Senator Thompson.— And without going into the question of whether or not they are making too much money, the question as to the discrimination, the difference between the retail price and the wholesale price, is rather apparently too great.

Mr. Thimme.— Exactly.

Senator Thompson.— And we will look into that. In other words, if they'd raise the cost of wholesale, that sells down at about a cent, if they'd raise that some, then they could lower this eight cent rate, your eleven cent rate that you have, down to three or four cents, why, it would make the wholesale and retail prices come nearer together, and the company would make just as much money. And something of that sort ought to be brought about; because it is in force in Cleveland, it is in force in Tacoma, it is in force in these places you mention; not only that, it is in force in all the large Canadian towns, like Toronto, Hamilton, London, Chatham, Windsor, Ottawa, Winnipeg — towns like that have it in force. The City of London, for instance — their rate is two cents, with 25 per cent. off for payment by the tenth of the following month; and they make money; but they raise their wholesale rate. You can't buy it at wholesale as cheap there as you can here in the City. And an investigation into those things

wouldn't harm. In Winnipeg the private company was getting fifteen cents when they started municipal operations; they finally got down to three. It is a good story; it is all right.

Senator Lawson.—In view of the fact, Mr. Thimme, that this subject is now under investigation by the Niagara Committee, for which Senator Thompson is Chairman, this Committee will refer that in time to that Committee; they will exhaustively investigate it, and make the greatest possible effort to have some change in rates, if it is possible to do so.

Senator Thompson.—Well, we will take that up as thoroughly as we can.

Mr. Thimme.—But I want to call your attention to this fact—that the question of electricity is only one of the many complaints that we have against the public service corporations of Greater New York. It is only one item.

There is the question of gas, there is the question of traction, of transportation.

Senator Lawson.—Well, your gas question has now been settled, hasn't it?

Mr. Thimme.—Well, it has not been settled.

Senator Lawson.—Well, you have got an 80-cent gas down there.

Mr. Thimme.—Yes, but here you have the City of Detroit, Michigan, furnishing gas at 50 cents.

Senator Lawson.—Yes, I know; but we have got to crawl, all of us, before we walk.

Mr. Thimme.—Well, we have been crawling a good many years, to my knowledge.

Senator Thompson.—Well, I think the Public Service Commission ought to do what the Committee on power did. I think they ought to go and examine and investigate in relation to these cities that I have called attention to, and that you have called attention to. They go on making rates here in New York, and they won't, absolutely won't, take into consideration at all what they can do

in other places. They absolutely ignore it; and simply talk on theoretical facts, theories. They will bring a witness here from St. Louis who has got nothing in the world but a theory no how much more can be charged to capitalization of one of those companies than they ever thought of before, and on what possible excuse they can do it; and they will spend two or three days on that, but absolutely won't look into what the municipalities are actually doing. And I think the Public Service Commission ought to do that. And if they'd send a sub-committee of the Public Service Commission here into these localities and see what they are doing, I think it would result in a great deal of good here. Of course, this Committee can't fix an electric rate, you know.

Mr. Thimme.— I understand.

Senator Thompson.— You have got a new Public Service Commission here, and I am beginning to think that they want to do what is right — if they give them an opportunity; and I think they should be given one. And as soon as we get through investigating, why I think it would be the policy of the Committee to give the Public Service Commission here all the encouragement we can, to take care of the people. They have got to know how, understand. There is the Chairman of the Public Service Commission: He is drawn from business life, put into questions of public service, and public utilities, of which he had no experience. You got to give him an opportunity to get experience — and when you do you may get a great service from him. And I am rather in a position to state that you might expect that I feel personally toward encouraging him along that line.

Mr. Thimme.— I would like to ask the Committee one question.

Senator Lawson.— Go ahead.

Mr. Thimme.— I would like to know if the Committee — your Committee, is aware of the fact that it seems to be the settled policy of our public service corporations to prevent by any and all means the municipal ownership and operation of public utilities?

Senator Thompson.— Yes, we have proved that.

Mr. Thimme.— Yes; because I have in mind —

Senator Thompson.— And I am going to tell them a good way to prevent it. I am going to be in sympathy with them, see? I am going to be in sympathy with the public utility corporations in that desire, and I am going to tell them how to prevent it. And I think if they don't take this advice that they won't be able to prevent it. And that advice is, they must take the public into their confidence and use them on the square; and then they will be able, otherwise not.

Mr. Thimme.— You think that is possible—for the public service companies?

Senator Lawson.— Well, if it isn't possible Senator Thompson means to convey that eventually municipal ownership will come — unless the public utilities corporations realize it.

Mr. Klein.— That is all, Mr. Thimme.

(Mr. Thimme leaves the stand.)

Mr. Klein.— Mr. Chairman, before I heard that the Mayor had issued a statement, I had prepared a letter to Senator Thompson, which I will read for the Committee:

“ (June 23d. 1916.)

“ Hon Geo. F. Thompson.

“ Chairman, Legislative Investigating Committee.

“ Dear Senator Thompson: In view of the fact that the Mayor of this City has refused to permit me as a representative of your Committee, associated with Mr. Frank Moss, chief counsel, to examine certain correspondence in his possession on the ground that he objects to me as the examiner, I deem it incumbent on me to ask you to invite the Mayor to state the grounds of his objection to this Committee. I think the Mayor owes it to this Committee and to myself to explain his objection.

“ With thanks, I am

“ Yours very truly,

“ HENRY H. KLEIN.”

(Letter read by Mr. Klein offered in evidence as Exhibit 2, June 24th, 1916.)

Senator Lawson.— Well, the Committee has invited the Mayor, Mr. Klein, and presumably the Mayor will accept that invitation.

Testimony of Bradford Merrill.

MR. BRADFORD MERRILL, publisher of The New York American (morning newspaper), being called as a witness, testified as follows:

(Mr. Merrill is sworn by Senator Lawson and takes the stand.)

Mr. Moss.— Mr. Merrill, will you state your relation to the New York American?

Mr. Merrill.— I am publisher of it.

Q. (Mr. Moss.) How long have you been in the newspaper business? A. (Mr. Merrill.) Since I was seventeen.

Q. You fell into your own trap. A. I think thirty-four or thirty-seven years — continuously.

Q. Now, in a few words, Mr. Merrill, I want to call your attention to the publication of your newspaper on July 20th, 1911, in which appeared the publication of a letter which Comptroller William A. Prendergast had signed in your office the evening before. And in view of the Comptroller's testimony concerning that matter, I have requested you to give a statement of how this thing came to be, and of the interview at your office, in your own way. A. Well, if you will permit it, I will state how I came into the matter, looking into the Subway contract negotiations; and I will be just as brief as I possibly can, but I will tell things in their proper order.

Mr. Moss.— We don't think it necessary to be brief. Take all the space and all the time that you think are right to take.

Mr. Merrill.— I will be brief. In the 1909 campaign for Mayor I was, while nominally publisher of the New York American, I was actively making up the paper, handling it, in the News Department. That campaign hinged principally on the question of public ownership of the new subways; public sentiment being unanimously in favor of building new subways.

Early in the campaign Judge Gaynor published in a magazine edited by Mr. James Creelman, who had been for many years a member of my staff, an article entitled "The Looters of New York," describing the way in which New York had been, as he said, looted by the Metropolitan Street Railway Syndicate and the operators of the Subway. He blamed in that article city officials for making a contract for the operation of the Subway in which the operator undertook as a first obligation to pay all the interest on all the bonds issued by the City to build the subways. That article was considered at the time by the public, I think, and I know by Justice Gaynor, because he told Mr. Creelman so — who told me — the opening gun in his campaign for Mayor.

A little later Mr. Gaynor called upon Mr. Hearst. Mr. Hearst had always supported Mr. Gaynor and had been friendly to him personally and politically. Judge Gaynor called at Mr. Hearst's house for the purpose of asking his support. Mr. Hearst asked two questions — one about the new subways and the other about the support of Tammany, whether he had any understanding with the leaders of Tammany Hall that he should be nominated on the Democratic ticket. Mr. Gaynor's answers were evasive on both of those points. On the subways he said, "Everybody knows where I stand on municipal ownership and public ownership." On the question of the support of Tammany his reply indicated that he expected the support of Tammany. Mr. Hearst told me, I think a day or two after that, that he did not believe it would be safe, under those circumstances, to permit the Municipal ownership programme with respect to the new subways to Mr. Gaynor, if he was relying upon Tammany's support. Later, it is known that the platforms of the two parties, first the Republican party, pledged itself to the general principle of public control of future subways. The Democratic platform went much farther. It pledged distinctly the candidate to be nominated to the definite programme that the new Subways should be built by the City, should be owned by the City, should be controlled by the City, and these words substantially were used: The contract for operation shall be separated entirely from the contract for construction.

Judge Gaynor said afterwards on the stump, several times, that he wrote that plank with his own hand. It was at that period,

however, that Mr. Hearst felt that he could not trust Judge Gaynor's sincerity on the subject of the Interborough; and at the last moment in the campaign he consented to head an independent ticket — if you remember, he had lost even the emblem of the Independence League, so it was practically nothing but a personal ticket; and he took on that ticket with him the candidates already nominated on the so-called Fusion ticket, who were practically controlled by the Republicans; among those candidates were Mr. McAneny, Mr. Prendergast for Comptroller, Mr. Miller for Borough President of the Bronx, and Mr. Sears for Borough President of Brooklyn.

Mr. Klein.— Mr. Mitchel?

Mr. Merrill.— Mr. Mitchel, of course, for President of the Board of Aldermen.

The campaign turned very largely on the Subway question. Judge Gaynor out-Heroded Herod in his attacks upon the Interborough and Metropolitan Street Railway Syndicate. He named them by name and he said again and again that if he were Mayor they would never have a finger in the pie — I think that was the expression that he used. Mr. Hearst accepted the assurances of the other candidates that they would support the public ownership principle, and he put them on his ticket for that reason. The public believed Mr. Hearst. Mr. Hearst stood sponsor for those men, and they received upwards of \$150,000 votes on his ticket and were elected because they were on his ticket and for no other reason.

The Subway question was taken up immediately after the election; committees were appointed, Mr. McAneny became Chairman. He proposed a plan, after long investigation. I won't go into it, but in brief it was that the program should be laid out for new subways by the City, that the corporations bidding for the franchise should have the privilege of operating for a certain number of years, that the interest on the bonds which they issued to pay their share of the construction costs should be first paid out of operating revenues, that then the City's bonds' interest should be paid in full, that then the private operators should receive, I believe, three per cent, and then the City should receive three per

cent. The plan was to offer this option to the Interborough, and if it was refused to offer it to the B. R. T. The B. R. T. signified its willingness publicly, in the newspapers and otherwise by advertisement, to accept that offer.

This report of the so-called Rapid Transit Committee, George McAneny, Chairman, was adopted unanimously by the Board of Estimate and became the City program. After which everything stopped. No progress was made on the contracts — preparation of the contracts. The whole work was stalled; for months nothing happened, and gradually it began to appear that the most powerful banking interests and the most powerful railroad interests had allied themselves together to defeat that entire program.

Mr. Moss.— Can you be more specific and name those banking and railroad interests?

Mr. Merrill.— I think the banking interests were chiefly the house of J. P. Morgan & Company, and with it, I think, if my memory is accurate, four hundred and twenty-two other banking houses which shared in its syndicate underwritings.

Mr. Moss.— Composing the syndicate.

Mr. Merrill.— Practically every important bank and every important private banker in the City of New York.

Mr. Moss.— Do you include Kuhn, Loeb & Company as an important factor?

Mr. Merrill.— I do not. They were not bidders in any way, shape or form for the Interborough.

Mr. Moss.— You are speaking of the Interborough?

Mr. Merrill.— The Interborough ring. Kuhn, Loeb & Company took the B. R. T. under their wing, undertook to arrange all the financing for that company; and Messrs. J. P. Morgan & Company undertook to do all the financing for the Interborough.

Mr. Moss.— Now the important railroad interests.

Mr. Merrill.— Well, chiefly the Pennsylvania Railroad, which had a perfectly natural and perfectly proper interest in getting

the Interborough Subway connected with its station, as its principal competitor, the New York Central, already had a terminal — a subway connection with the Grand Central.

Mr. Moss.— Yes. But couldn't the Pennsylvania have become connected with the system even if it had been awarded to the B. R. T.?

Mr. Merrill.— It could.

Mr. Moss.— Yes. So if the Pennsylvania preferred the Interborough —

Mr. Merrill.— It naturally allied itself with the powerful interests which were already working.

Mr. Moss.— The banking interests?

Mr. Merrill.— The banking interests.

That was why the entire work stopped and everything came to a halt for about a year — nearly a year. Then it appeared that the Interborough had flatly refused the City's proposal — would, as Mr. Shonts afterward said publicly, have nothing whatever to do with it. The B. R. T. remained in the field and was still in an attitude of willing-compliance with the program. But the banking interests united and the Interborough, social and political and financial interests, were so strong that they upset the whole City program — procured practically the abandonment of the program which had been unanimously adopted by the Board of Estimate and Apportionment. And thereupon began a new negotiation, to turn over the new extensions of the Subway in Manhattan and the Bronx to the Interborough.

Those negotiations came to a head in the Spring of 1911, fifteen months after the new administration was in power. Mr. Hearst's instructions to his staff were not to tie the paper to any definite program. He was not committed to any man or any definite plan, or opposed to any plan or opposed to any syndicate or any banker. There was simply two objects to be kept in view: First to get the Subways — that he regarded as of paramount importance. Second, to preserve the principle of public ownership

in some way, so that the City might derive some share of the profits from its own streets. He worked very hard in that Spring, and left in, I think, the month of May for Europe, to keep engagements in London — business engagements that he had made in London.

The work of carrying on the Subway articles in the paper then devolved upon me. Early in July I found — I was informed — that Mayor Gaynor had succeeded in bringing over nearly a majority of the Board of Estimate to the Interborough. I was so informed by Mr. Maltby, who was Public Service Commissioner, by Mr. Willcox, by our own City Hall reporter, who was in touch with all the interests, with people interested in the Subway negotiations, and I heard it also from the Times — New York Times, I think, whose name I remember.

One characteristic proof of Judge Gaynor's work: One day Mr. Willcox — Commissioner Willcox — was in my office about another matter, and I asked him, "How do you account for Judge Gaynor's behavior in the Subway contracts?" He said, "I cannot account for it. All I know is that one of the most difficult things I have had to deal with in getting any kind of favorable terms from the Interborough has been the opposition of the Mayor. Every concession that I have demanded has been opposed by the Mayor." I must say incidentally, Mr. Chairman, Willcox was entitled to a great deal of credit for bringing in competition into this question of subways. He had first introduced Mr. McAdoo, who operated the tubes under the Hudson, to make a bid — which didn't amount to much, but which started the ball rolling. Then he induced the B. R. T. to come in and bid for a rival line. And that of course, by increasing the pressure of competition, gave the public a very much better chance. But Mr. Willcox, as an illustration of Judge Gaynor's — or Mayor Gaynor's attitude, said: "For instance, one day last week I had a long discussion late in the evening with the Interborough officials" — he may have used Mr. Shonts' name and he may not; I don't remember — "and insisted that some provision should be made for a recapture clause in the contract by which the City could get either one leg or the other. The Interborough was almost to the point of granting

that. At ten o'clock the next morning Mr. Gaynor called me up from the Mayor's office and asked me to drop in. I went over there at luncheon time. The first thing he said to me was, 'Willcox, it isn't reasonable for you to insist on such a demand as you made to the Interborough last night.' "

Mr. Willcox said: "I said, 'Mr. Mayor, how did you hear of it?' " And Judge Gaynor made some simple remark — it was matter of hearsay, somebody had brought the information to him.

The information could have come to Mr. Gaynor, of course, only directly from the officials of the Interborough with whom Mr. Willcox was negotiating, because only two human beings in the world knew about it — Mr. Willcox on one side, the Interborough officials on the other. Mr. Willcox had spoken to no one. Mayor Gaynor took the part of the Interborough, argued that what Mr. Willcox demanded was unreasonable, that he ought not to insist upon it. Mr. Willcox said that it was a pretty hard situation to deal with on that account. He was extremely interested then in getting competition and in getting a clause into the contract which would make it possible for the City to recapture the lines at some future time on terms which were remotely feasible.

Early in July, as I have stated, I heard that the Mayor had almost succeeded in getting a majority of the Board; it required eleven — I believe there were sixteen votes — to make the contract Mr. McAneny had gone over very frankly. He was hypnotized by the prospect of a Dual System, of a subway system that would go down in four subways and put down seventy miles of new tracks; and as he stated publicly and very frankly and very fully, "Would give the City twice as many miles of subway as it would be likely to get if it built them all for itself." He became a frank advocate of the bankers and the corporations' side. I think he was hypnotized by their arguments. I never had the slightest doubt of his integrity. His public statements were very full and clear at the time. And his conversion, from his own report, came probably after long and careful investigation and reflection, was gradual to the corporation view; and that conversion was coincident with the period when all these City officials were abandoning their own offices, instead of continuing the investigation, the nego-

tiations in the places where they were clothed with the mighty power of the City and backed with the great authority of the City, they left their chairs and went to private clubs and private houses and private residences and met the bankers on their own ground — the ground where the City official is very small and the banker is very big. I think it was two or three days before the 20th of July, when the question was to come before the Board of Estimate, that I was informed that Mr. Prendergast, who was our last chip saved from the whole thing, that even Prendergast was going to the Interborough.

Mr. Moss.— Pardon me. You say Prendergast was the “last chip.” What had become of Mitchel?

Mr. Merrill.— Let me say, let me put in right here as a part of the record, that Mr. Mitchel was not only a very consistent and strong and able fighter in that thing from the beginning to the end, but he held out to the end. He fought splendidly; and nobody could possibly have a better record than President Mitchel had in all of those negotiations and in the whole matter up to the very end. It was on that record that he was elected Mayor.

Mr. Moss.— Yes. I am glad to have you say that, because it has always seemed to me that that was so.

Mr. Merrill.— He can’t be praised too highly.

Mr. Moss.— And it seems that he was the one man who was consistent with his pre-election pledges.

Mr. Merrill.— I saw him repeatedly. He bore all the pressure that all the other people did, and he stood like a rock. I was familiar at the time, from what he told me, of arguments.

Mr. Moss.— Then as to Mr. McAneny — when he went over he was consistent to going over.

Mr. Merrill.— Mr. McAneny simply abandoned his own position, his own report, all his own ideas, all his own speeches in the campaign, and simply became a convert to the corporation ideas; that is all.

Mr. Moss.— And having become a convert, he remained such; he didn't wriggle.

Mr. Merrill.— He didn't publicly. He stated, little by little, his conversion — gradually, as I said, during the course of all these long secret interviews. But no one attributed an improper motive to him. I thought that he was simply a case of a sincere man who had got under the dominion of stronger minds than his own; that is all.

Mr. Moss.— When I interrupted you, you were speaking of Prendergast.

Mr. Merrill.— Mr. Miller was fixed by an extension of the Interborough's program in the Bronx which gave him more lines. A Borough President naturally fights for his borough. Mr. Sears wanted the B. R. T. let in first. He was the Borough President of Brooklyn. Naturally, Brooklyn people will fight for the B. R. T. against the Interborough — although they don't always fight for the B. R. T. in Brooklyn.

Mr. Moss.— They hit the B. R. T. when it is alone.

Mr. Merrill.— Yes, when it is alone. But he became doubtful of this wasteful contract, and was on the fence for quite a time. And some weeks before the question came to a vote he said that he thought his vote would be the deciding vote. Mayor Gaynor at that time said he would be responsible for Sears — that Sears would do what he said. Mr. Sears, it happened, voted for the Interborough contract. And I believe it is a matter of fact that Mr. Gaynor soon thereafter appointed Mr. Sears to a City magistracy — long term office. I don't know whether one had anything to do with the other. I don't wish to draw any inferences. Prendergast was the last.

Mr. Moss.— Wait a minute — you were speaking of borough presidents. What do you say of Cromwell of Richmond?

Mr. Merrill.— Mr. Cromwell was always fascinated by the project of the branch of the subway that should go down opposite Bay Ridge, and they were going to tunnel into Bay Ridge and put his

borough on the subway. It was always in the air, it was always a mere plan, but he professed to believe it. No one else believed that it would be carried through. And he always gave that as an excuse for supporting the railroad.

Mr. Moss.— Then there is Gresser, and Connelly, of Queens.

Mr. Merrill.— Gresser was the Borough President in Queens, not Connelly. Connelly succeeded Gresser later. Gresser stood loyally by the program to the very end — the City program. Nothing could budge him. He cast only one vote, however. But the real thing, with Gresser's vote settled, however, and with Mitchell as firm as a rock, made four votes; and if Prendergast stood fast, the whole thing was defeated.

By this time everybody knew that Gaynor was open and that he was the most efficient and effective ally that the Interborough had, because of his great power in the City. I think it was not much before, not more than a day or two before the 20th of July, that I heard the first definite rumors that Prendergast has joined the others. The only confirmation I could get through the members of the staff who saw him was evasive replies. He had up to that time discussed very fully every phase of the question. He had reaffirmed his position, promised to stand by his pledges, made not only as a candidate for office but in a speech-making tour after, and always reiterated his position until this week before the vote came. Then he suddenly became silent, and dodged questions.

I had had occasion, a few years before that, to look into the subway question in Paris, where a municipal subway is operated, built by the city, the city taking one-tenth of every five-cent fare — that is, 20 per cent. of the gross. If that plan were adopted in New York, New York would receive, of course, \$3,600,000 a year from its present subway. It doesn't receive a penny.

I had also investigated on the ground in Chicago, casually, the profit-sharing basis under which Chicago operates certain of its street railways, receiving 55 per cent. of all the net profits. But here was the New York subway, making between thirty and thirty-five per cent. on all the money that the private operators had in-

vested in it, and the City not receiving one penny. The night before the —

Senator Thompson.— You say the City would receive more than three million dollars, according to the figures?

Mr. Merrill.— At the minimum, I said \$3,600,000. I mean from the existing subway, the City would receive \$3,600,000 under actual operating contract now in force in Paris.

Senator Thompson.— Well, they'd receive that on the net basis. But on the gross they'd get more money.

Mr. Moss.— Yes, that is true.

Mr. Merrill.— Computing the fares at about a million a day — they run over that of course — a million a day would be ten thousand dollars a day. That gives easily \$3,600,000. I was computing it in round figures, that is all. That takes no account of the elevated division.

Senator Thompson.— That is right.

Mr. Merrill.— I was speaking of the subway only. And I stopped in Detroit once when I was on a business trip, and looked into their public ownership. These things are perfectly feasible, if worked out absolutely well. And of course in New York City there is the most favorable possible conditions for public ownership because we have a traffic in the streets that far exceeds the traffic of London in spite of its seven millions of population.

I am getting off of my narrative.

Sometime during the afternoon of the 19th of July, 1911, I asked our reporter who covered the City Hall for us at that time to go to Mr. Prendergast and ask him to come to the office to see me. I never had met him. Some of the other officials I had seen frequently and had talked with Mr. Mitchel a number of times and with the Public Service Commissioners, but I never happened to have met Mr. Prendergast. The reporter was Mr. Weir, who is now the Park Commissioner of Queens. I don't know where he found Mr. Prendergast, but I know that he telephoned

me about seven o'clock in the evening that Mr. Prendergast "will be at your office soon after seven o'clock."

He came in a few minutes before eight. I took him to Mr. Hearst's room. We were alone. Without any prelude whatever I said —

Mr. Moss.— Pardon me. You said you were alone. Did Pudge Shearn come into that conference at all? Was Mr. Prendergast mistaken in that?

Mr. Merrill.— Not at any time. I will tell in a minute how that got in his mind.

Without any prelude I asked him — I said to him that I had asked him to come to see me to tell me how he was going to vote on the Subway contract the next day; that I had the right to ask, because the chief issue in the campaign in which he was elected was the question of public ownership and City-owned and controlled subways; that he had given not only his public pledges not once but fifty times in speeches, but that he had given private assurances to Mr. Hearst to my certain knowledge that he would stand by his pledges; and that on the faith of those pledges Mr. Hearst had put him on the ticket; and I had been in charge of the paper and we had all worked just as hard as we possibly could to elect him. I said:

"I think I have a right to ask you now, Mr. Hearst being out of the country, whether you are going to be a traitor or whether you are going to keep your word; whether you are going to do as Jerome did, or whether you are going to be an honest man."

He was very nervous; sat down in a chair and fidgeted, jumped up and sat down and jumped up and sat down several times, and began a long rambling statement about the advantages of a five-cent fare all over town, and the great advantages that would accrue if the new subways could only be linked up with the present subways. And I let him talk for oh, five or six or seven minutes, to see if he had any new idea or any new reason. He had none. He simply stated the old staid corporation arguments, which were not even two or three years old — they were ten years old, dating

back to the building of the original subway. When he had finished I said:

“Mr. Prendergast, those arguments were all made by the corporations years and years ago, long before you accepted your nomination for office on the platform which opposed all of those things. There is not a new fact, there is not a new argument. What is the real reason?”

Whereupon he again rambled off, said that he had no reason, had not made up his mind.

His conduct convinced me that he had promised to support the ticket — his manner, I don't mean his conduct, his manner.

Mr. Moss.—You mean support the Interborough?

Mr. Merrill.—Support the Interborough — support the Interborough.

I think that my conversation became very earnest at that time. I recalled the stumping tour that he made with Mr. Mitchel, about a year after the—his—election, for the purpose of arousing the City to exert pressure so that something might be done on the Subways, the Interborough having held up everything. I spoke of the very excellent speeches he made at that time—what a strong impression he made. I recalled to him the fact that there had been one campaigner who was even more brilliant than Mr. Prendergast had been as a campaigner, a perfect Warwick of a campaigner — Mr. Jerome, who had proved himself so strong that he could defy Tammany Hall, could defy even the Republican Party, could run as an independent candidate and actually get himself elected — which showed that he was about the finest campaigner of his generation. But I said:

“Mr. Prendergast, you remember perfectly well what happened. You remember the reason that people took to Mr. Jerome — that phrase in his speeches which set New York wild with enthusiasm for him was this:

“If elected District Attorney of New York, I will follow every trail of crime even if it leads to the Directors' Room of the Metropolitan Street Railway.”

I asked Mr. Prendergast if he recalled the phrase. He said he did. I said:

“ You know what Mr. Jerome did when he became District Attorney. You know that the officials of another railway tried to expose the bribery and corruption in the Metropolitan Street Railway. And that man who exposed it was sued for criminal libel by one of the officers of the Metropolitan, and Mr. Jerome became the prosecutor for the Metropolitan. Later on the Commissioner of Accounts tried to investigate the books, and did investigate them, and found certain irregularities amounting to millions, and a complaint — ”

Mr. Moss.— What books?

Mr. Merrill.— The books of the Metropolitan.

“ And a complaint was made to the District Attorney, asking him to prosecute. But he undertook the prosecution of somebody who was trying to, who was, annoying the railways. In other words, he became the ally, friend, and then champion of the Metropolitan Street Railway.”

Mr. Moss.— Became the ally of the railroad he had denounced.

Mr. Merrill.— Of the railroad which he had denounced. I asked Mr. Prendergast if he wished to hold the place in the community that Mr. Jerome has held since that incident. I think that was the last word that I said before Mr. Prendergast jumped up from his chair with great vehemence and said, “ I will vote against that Interborough job. and I will write it right here.”

I said, “ All right, there is a table and stationery.” He —

Mr. Moss.— Pardon me. Mr. Prendergast denied here, at this hearing, he denied that Mr. Jerome’s name was mentioned in that interview. Go on.

Mr. Merrill.— Well, I think it is trivial what happened; after all, we know what he did.

Mr. Moss.— Yes.

Mr. Merrill.— It is really trivial. I am telling you in the sequence of events. If you happen to have a file of our paper here,

you will get confirmative material for what I said. Because after, I was so much impressed with the entirely accidental reference to the experience of Jerome. the effect it had on Prendergast, that after this interview I got out a little picture of Jerome and put it in the paper next day with a few lines under it.

Mr. Moss.— Yes; and, Mr. Chairman, we used a section of the American to give the stenographer a copy of the letter from it, and I remember that on the section of the American which I gave to the stenographer was the picture of Mr. Jerome, and a recital of the general incidents.

Mr. Merrill.— It had nothing to do whatever with the Subway matter which was up.

Senator Thompson.— Well, those things are not trivial.

Mr. Merrill.— It had been in our conversation.

Mr. Moss.— That very thing that Mr. Merrill is speaking of is in our hands; it is in the stenographer's office, being copied.

Mr. Merrill.— The Jerome thing was six years old. Why should I put Jerome's picture in the paper at that time, except the incident had brought it up — and the incident that brought it up was the conversation.

He was greatly excited, and sat down to Mr. Hearst's desk — this conversation occurred in Mr. Hearst's private office, and there were various piles of stationery, different sizes, and he took one of the largest sheets and began to write. But his nervousness is shown by the facsimile which is produced — words are scratched out, the writing is not legible in some points.

Mr. Moss.— He got very nervous here. When I asked him if his hand shook he near took my head off.

Senator Thompson.— I notice that you said he took one of the largest sheets.

Mr. Merrill.— While he wrote I walked up and down the room, and he wrote to the end, and then folded the thing, I remember him folding it and creasing it this way, and said, "Well, there you are. I have written it. Now there it is in black and white"

¶

And I said, "Mr. Prendergast, I congratulate you. You are not going down in disgrace then. You are a man of your word." Something of that sort; I don't remember it exactly. I left the room with him. And the road to Mr. Hearst's private office at that time led through the General News Department, the City room. As we walked out I noticed that Mr. Prendergast stopped to talk to some of the local men whom he knew. The desks were all there, and we had to walk between them, in the aisle. I asked Mr. Weir by telephone — I hadn't seen him since Mr. Prendergast's testimony — and asked him. "When did you see Mr. Prendergast after the interview with him in my private office?" This is not in evidence, I know, this is just hearsay; it comes in here in the narrative. I assume that he will confirm it if you take the trouble to ask him. He said that — "I saw him sometime after he left your office." I asked, "When did Mayor Gaynor's statement come out?" — the famous "damnable rascality" letter — and he said, "About ten o'clock." I think Mr. Weir is wrong. I think it did not come until after eleven o'clock.

We went to press in those days at midnight. I personally gave out the statement of Mr. Prendergast, and it was set in odd-measure type, beside one of Mr. Mitchell's in hand type, which every printer knows takes time. And you have to make up a first page sometime in advance to get it into six columns, ten lines and boxes and hand type. The Gaynor statement in our first edition was used absolutely single column nonpareil.

Mr. Moss.— Machine type.

Mr. Merrill.— Machine type, the way that you get up a thing in a great hurry, and probably turned off to the second page. The head lines covered both. But the fact remains that the Mitchell statement and the Prendergast statement were set in hand type, and larger type than Gaynor's statement. Now, of course the Gaynor statement was much the more striking as a matter of news, because Gaynor was the Mayor; everybody believed that he had been and knew that he had been working for the Interborough. Here was a letter throwing over the whole thing, denouncing its "damnable rascality" and saying that the City was being overreached by some financiers of great ability. So that normally any

news editor would put that in larger type than the other. The fact is that the Gaynor letter came in at the last moment. I was informed — and I don't remember who told me — that Mayor Gaynor was in his office late that night and some one told him that Mr. Prendergast had gone to The American office. Mr. Prendergast's conversation with me lasted, I should say, more than an hour. And after the long delay, his failure to appear, Mayor Gaynor suddenly decided to throw over the whole thing. In other words, he beat Mr. Prendergast to it. He got out a letter, quickly, to the public; handed it out to the City Hall reporters.

Mr. Moss.— In that conversation between you and Mr. Prendergast, did he speak of the influences that were behind the Interborough?

Mr. Merrill.— I don't remember that he did.

Mr. Moss.— The great power that was behind it?

Mr. Merrill.— I don't remember that he did, except he used the general phrase — he said, "You know these are very powerful people."

Mr. Moss.— Did you know that Mr. Prendergast became Mr. Gaynor's representative in the conferences after that?

Mr. Merrill.— I did not know it.

Mr. Moss.— He testified to that here the other day.

Mr. Merrill.— I did not recall. If I knew it I had forgotten it. I know that Mr. Prendergast and Mayor Gaynor had been unfriendly prior to that date. Of course, it is a public record, because it is in the Mayor's speeches. And in the Board of Estimate they had frequent clashes. And after that they became very friendly, and Mr. Gaynor — not immediately after this period but after a later period when Mr. Gaynor and Mr. Prendergast got back into the Interborough fold, and both voted for the contract and put it through.

Mr. Moss.— Yes. Did you ever talk with Mr. Prendergast after he went back on the American letter and voted for the Interborough contract?

Mr. Merrill.— I never spoke to him in my life since the night; I had never spoken to him before, and I have never spoken to him since, after that interview in Mr. Hearst's room. I have seen him on public occasions.

Mr. Moss.— Have you learned anything as to the reason why Mr. Prendergast did go over to the Interborough after writing that letter?

Mr. Merrill.— I have no definite knowledge on that subject.

Mr. Moss.— Have you any information that you would give to the Committee either publicly or privately?

Mr. Merrill.— I cannot give you any information that would be definite.

Mr. Moss.— Do you believe that there was a movement on the part of the railroads that were interested in putting through the Dual Contract, a movement to depreciate the debt margin of the City for a long time previous?

Mr. Merrill.— It was obvious in the statements given out. Everybody who wanted the private bankers to have the contract always said the City "cannot afford it" — that we are too near the debt limit.

Mr. Moss.— Yes.

Mr. Merrill.— On the other hand the expert in the Finance Department and Mr. Mitchel, who is a pretty able financier too, made estimates. They varied a little bit, ten or fifteen millions, but they showed that the City had somewhere between one hundred and eighty and two hundred millions available to build subways, and could build them, absolutely, at that.

Mr. Moss.— You believe there was always money available to build these subways?

Mr. Merrill.— Mr. Prendergast was on record as saying so. He made out official statements.

Mr. Moss.— You believe it?

Mr. Merrill.— I know it.

Senator Lawson.— And thereafter, as a result of statements made at that time, Mr. Merrill, a Commission, of which General Tracy was Chairman was appointed to examine it, and to confirm those statements.

Mr. Merrill.— Not only were efforts made, but the Commission was appointed, and General Tracy, I believe, made a report.

Mr. Moss.— Yes, he made a report.

Mr. Merrill.— Which opened the whole subject, and resulted in legislation at Albany. We had fought up to the Appellate Division three or four times, and tested points as to the right of the City to do this thing.

Mr. Moss.— Then you recall the large increase in assessed valuation for which Mayor Gaynor was responsible?

Mr. Merrill.— That was intended to pave the way to the increase of the bonded debt of the City, making possible the subways.

Mr. Moss.— Up to a certain point there appeared to be a real program to enlarge the City's resources so that the subways might be built; and then after that just as decided a plan to depreciate the City's resources, or to depreciate the idea of the City having sufficient resources so as to discourage municipal construction.

Senator Lawson.— The real fact is, Mr. Merrill, that the Tri-Borough plan, as originally outlined, was the most popular plan, and that to which the people took most handily, wasn't it?

Mr. Merrill.— Why, I should cover the whole thing in a sentence by saying I think that there having been a referendum on the question years and years after, and the referendum in favor of public ownership was carried ten to one, then there had been two Enabling Acts through the Legislature, that the bankers and the corporations had raised legal obstacles of one kind and another which involved the sending of the matter up three times to the Appellate Division, and I believe once to the Court of Appeals; the people had won on every side, and the entire public was marching directly towards the Tri-Borough and public owned subways.

Mr. Moss.— Well, in such an arrangement as that —

Mr. Merrill.— * * * and everything went perfectly smilingly until the officials were elected and had been in office a few months, when suddenly unseen powers interposed obstacles. The unseen powers were, of course, the bankers, who could derive no profit whatever from bonds issued by the public because the law requires they shall be sold in competition; whereas bonds issued by a corporation is purely and entirely a matter of private financing.

Mr. Moss.— Yes; not only that, not only the profit that the bankers could make privately in such an arrangement as the Dual Contract, but they would get control of these important railroads, and having control of these railroads along with other public utilities, they would practically own the City of New York.

Senator Lawson.— Well, as a result of the abandonment of the Tri-Borough System, the Borough of Brooklyn lost the Lexington Avenue Route, which would have been a subway up to Broadway, and in its place today have a great heavy three-track elevated road running up Broadway, depriving the tenants and owners of light and air — all necessary easements that go with the ownership of property. Now that to the people of Brooklyn has been a most distressing circumstance. That was one of the important routes that the people of Brooklyn were depending upon — that route to go right up Lexington Avenue to Broadway—I think it was called the Lexington-Lafayette route.

Mr. Merrill.— Yes.

Mr. Moss.— Now, while you are here, Mr. Merrill, are you willing to express an opinion upon the Dual Contracts and upon the question of the terms and whether the City loses or gains by the Dual Contract? Are you willing to express an opinion on that? I ask it because I think you are an expert.

Mr. Merrill.— I don't pretend to be an expert, Mr. Moss.

Mr. Moss.— Well, I think you are.

Mr. Merrill.— As I stated, I personally looked into the operation of the railroads in Paris, casually, superficially, in Lon-

don and in Detroit and in San Francisco, where there was public ownership.

There is no reason under the sun that I know of why a city should not derive some profit from the transportation of its own people and the use of its own streets. The only obstacle that I know of is the obstacle of private banking interests and existing monopolies in those streets. Those influences have been too strong, we have found, in that City, to make it possible for the people, even where the people were almost unanimously moving in that direction, to carry out any program adopted.

Just to complete that record: After the vote of July 20th, 1911, rejecting the Interborough program, everybody supposed that at last the thing was settled.

Mr. Moss.— You said so in your paper on the 20th.

Mr. Merrill.— Everybody supposed it.

Mr. Moss.— There was lots of rejoicing about that.

Mr. Merrill.— Not only did the people rejoice, but on the 31st day of August, I think, six weeks later, there was a parade, bands of music, and the Chairman of the Public Service Commission went up in the Bronx to turn with a silver shovel the first spade of earth on the Tri-Borough Subway.

Mr. Moss.— That was in August.

Mr. Merrill.— Six weeks afterwards. And everybody supposed at last, "Here is the public owned Subway that is going to be operated by the City." And everything went beautifully for four or five months, when suddenly it transpired that contracts for other sections were being held up, delayed by the lawyers. Why were they delayed? Well, one excuse after another. Month after month went by; contracts were not let for the downtown sections, and after about six months more, it was found that the Interborough and the bankers had not let go. They were not going to stay weakened. So that the entire public work of the City was held up, the City was held up, until the bankers and the corporations got what they wanted.

Mr. Moss.— Yes, and they got it.

Mr. Merrill.— And they got it.

Mr. Moss.— I think that is all, Mr. Merrill.

Mr. Merrill.— And the result is that for a period of fifty years the private operators are to take \$14,700,000 a year out of the Subways. And there is nobody in this room so young, I think, that you will live to see the day when the City will receive even the interest on the bonds which it has issued to build these subways for the private gentlemen who are operating them.

Mr. Moss.— That will go into the tax budget.

Mr. Merrill.— The citizens have got to pay taxes and raise money by taxes to pay interest on the bonds, to build the railroads for the private profit of the gentlemen who are operating them. That is the situation.

Senator Thompson.— Capitalization of over eight hundred million dollars.

Mr. Merrill.— No one can deny it. Nobody does deny it now.

Mr. Moss.— You don't finish the statement there, Mr. Merrill. It has come out here that the City can't tolerate buses, because they would cut into the profits. **The City can't tolerate** shorter hours for the men. It can't tolerate increased salaries.

Mr. Moss.— Yes.

Mr. Moss.— It can't tolerate a reduction in the rate of fare. Those things can't be done because the City is a partner and it is interested.

I think that is all, Mr. Merrill, and we are very much obliged to you.

Senator Lawson.— We are obliged to you, Mr. Merrill.

Adjournment to Monday, June 26, 1916, at 11 o'clock.

JUNE 26, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

Monday morning, June 26, 1916.

Meeting called to order at 11 o'clock, Senator Thompson presiding.

MR. PAUL WILSON takes the stand, and having been previously sworn testifies as follows:

Q. (By Thompson) Since you were here Saturday I assume you have some other letters? A. Two particular letters.

Q. Those may be left in possession of the counsel? A. Surely.

Q. They will be returned to your office; I will guarantee the return of those letters. A. I'd like to make a note of the dates.

Q. I suppose those were the ones you had the other day. Any objection to leaving them here? A. None whatever, only I'd like to make a list of the letters left.

Q. Mr. Wilson, I have noticed that your superior officer, who is the mayor of the city, has given a public statement in which he says he does not trust Mr. Klein. These papers you produced are not what I want and I want, the Committee desires, Mr. Klein to look through these records. I have no disposition to send any man that is untrustworthy to look at public files in private. On the other hand, I could not accept from any man just a bald statement that he is not trusted to stand, and I have no facts because now if this is only a question of the personality of Mr. Klein, I wont take up the time of the Committee with it. There are some matters over there that I want. These last two letters you produced this morning are not at all what I am after and so I must insist and I wish you would take it up with the mayor. I assume you will be at his office this morning? A. He is out of the city, up in Orange county, on a long standing engagement.

Q. When will he return? A. Tomorrow morning.

Q. Very well, we will take it up in his office tomorrow morning and I am going to request him through you, and I am going to send the sergeant-at-arms over there and request the mayor to give

his permission to let me send my man through his file or let the mayor come before the Committee at 11:30 and state the facts. If he is wrong we will dismiss him and hire someone else. I expect the mayor to permit an examination of the files. It is a public question and insofar as it is a private proposition, I wouldn't take it up but this thing is public, and it is to be desired.

Mr. Wilson leaves the stand which is taken by Mr. Abel, who, having been previously sworn, testifies as follows:

Senator Thompson.— We will take up Mr. Seaman as soon as Mr. Moss arrives which will be about 12:30 — as soon as Mr. Moss comes. In the meantime Mr. Shuster will go on with these matters.

Mr. Shuster.— Mr. Abel, I am referring to general balance sheet for the New York Municipal Railway Corporation furnished the Committee by your company for the fiscal years 1913-15, inclusive. Have you a copy of that with you?

Mr. Abel.— I don't know whether I have or not. Yes, I have.

Q. In your first subdivision of assets, 1913, your cash as of June 30, 1913, was thirty-five million five hundred odd thousand dollars. In 1914 that is reduced down to nine thousand dollars and in the year 1914 there is a new classification under the title, "Bond Proceeds" appears. Is that decrease in the cash item reflected in that item of Bond Proceeds of 1914? A. Well, the item of bond proceeds in 1914 compares with the cash item in 1913. The Public Service Commission asked that we show the bond proceeds as a distinct item apart from the general cash. Hence, the additional account in the transfer of that item.

Q. That really is a cash item, only under a title required by the Commission to be used? A. It is cash, but it is in trust.

Q. Now, is the difference between the cash item in 1913 and the bond proceeds of 1914 reflected in your fixed capital? A. And other accounts.

Q. Substantially if at all reflected, the major difference is reflected in that fixed capital? A. Yes, sir.

Q. Now, you will note in 1915 a further substantial deduction of bond proceeds, and that difference is doubtless reflected in the fixed capital for the year 1915. A. Yes, sir.

Q. The Company also use, in addition to that, other resources. I find you have fourteen million two hundred odd thousand intangible street railway capital and fourteen million eleven odd thousand expenditures on leased lines in the year 1915, which, added to your bond proceeds of ten million three hundred odd thousand is considerable in excess of the thirty-five million five hundred odd thousand you started with in 1913. A. Well, the element of difference between the par of the bonds and the proceeds in connection — The figures that you have quoted in fixed capital in 1915 are the total expenditures to date, as to the date of June 30, 1915, and wouldn't necessarily be comparable with the amount of cash of bond proceeds either at 1913, June 30, when this figure is made up, or at June 30, 1915.

Q. Either one of those items tangible street railway or expenditures to leased lines, would substantially make up the difference between your bond proceeds at the end of June, 1914, and the end of June, 1915. A. What ever has been expended has been charged as shown in the statement and it might not have come from the item that is shown June 30, 1913. because substantial sums of money had been expended as is shown in the balance sheet of June 30, 1913. The items that are shown expenditure for road or equipment, three million and a half, those items are undoubtedly grouped under expenditures on leased line in the following years.

Q. That would leave you still about eleven million that must have been paid for in large part out of the cash proceeds, bond proceeds. A. Undoubtedly.

Q. And then you have about three million more added in 1915 to your expenditure on leased lines, which would make between fourteen and fifteen millions. A. If you will look on the other side of the balance sheet you will see an item of interest accrued on funded debt, one million dollars. That is also undoubtedly included in the expenditures which you refer to, to the extent that the interest has accrued.

Q. Now. the classification, expenditures on leased lines, are those the lines that are city owned? A. City owned.

Q. And your tangible street railway, what lines do they cover? A. Those characterizations, street line and railway capital since December 1, 1908 — intangible street railway capital, ditto and

ditto again, would relate to other than city owned lines. The construction of existing railroads.

Q. Does the New York Municipal own some railroads other than those described in the contract form? A. It leases the New York Consolidated lines. The New York Municipal is one of the city owned.

Q. So that everything in your fixed capital expenditures with the exception of that portion expended on the city lines and entitled expenditures on leased lines and company's contribution to city railroads, is moneys expended on the elevated railroads, third tracking, extensions and all that? A. New roads — the physical properties — belonging to the New York Consolidated, yes, sir.

Q. And is that increase in valuation in any way reflected in the balance sheet of the New York Consolidated Railway Company? A. No, sir.

Q. That value is being added to their properties? A. Yes, sir.

Q. And is being added, largely, out of the proceeds of the moneys for sixty millions of dollars borrowed for the purposes of carrying out the contracts in the large contract? A. Pursuant to Contract No. 4.

Q. What, if any, physical assets are being created that belong to the New York Municipal Railway Corporation by the expenditure of these vast sums? A. Well, to the extent that the New York Municipal expends any money on the existing lines of the New York Consolidated to that extent the New York Municipal has an equity.

Q. What, in the form of mortgage or rights under the lease or contract? A. Under its lease and contracts with the city.

Q. It has no legal title in any of those added visible assets? A. It has what is equivalent to a mechanic's lien. It has a long term lease with the city on that.

Q. Yes, but it owns the physical property. The Municipal owns it, doesn't it? I think the New York Municipal owns that line. A. The New York Municipal owns the physical structure of the third tracking also but it is on another company's property.

Q. Your interpretation of the third-tracking certificate and the rights of the New York Municipal under that is that it is a later holder of the title to those third tracks, subject to the lease of

the New York Municipal? Is that your interpretation of that? A. Has the legal ownership.

Q. The New York Municipal? A. I think the New York Municipal has it, in addition to the existing railroads subject to the existing bonded debt of the New York Consolidated.

Q. Do these additions come under the mortgage of the New York Consolidated? A. The New York Municipal.

Q. Not under any mortgage of the New York Consolidated? The prior lien covers the original structure, so that whatever title there is in the New York Municipal in the third track expenditures constructed under the certificates is subject to the mortgage rights of the New York Consolidated? A. I think that is duly set forth in the contract.

Q. Maybe. I am asking for information on that. I rather took that line of interpretation with regard to the new railroad built there as the extension is so-called, but the third-tracking I was in doubt as to whether or not the title to that property was in the New York Municipal or the New York Consolidated. A. I think the only differences in the extension the franchise title is in the New York Municipal, where in the existing railroads the franchise title is in the Consolidated.

Q. Now the New York Municipal is spending some moneys for the proceeds of that bond sale in reconstruction of the New York Consolidated elevated lines. A. Mr. Schuster, under the terms of Contract No. 4 the preferentials allowed the New York Municipal under its lease is to cover the then existing railroad. Any moneys of a capital nature subsequently expended were to be expended by the New York Municipal railroad pursuant to Contract No. 4, so that the New York Consolidated makes no additions to its property. Subsequent to March, 1913, all the expenditures are made by the New York Municipal Railway Company and as to those expenditures, the lessee is allowed 6 per cent. interest.

Q. But is there any provision made for reimbursement to the New York Municipal at the end of the term? They are improving other corporations' property; they are adding value to the New York Consolidated properties — A. Yes.

Q. — And they receive interest out of the income on all those expenditures? A. Yes.

Q. Now, will the Sinking Fund (that is provided in the certificates) amortize that expenditure during the term of the franchise? A. Yes.

Q. Well, that franchise is 85 years, as I recall. A. The third-tracking expense, I think, is 49.

Q. But will those expenditures be amortized in the period of the lease? A. All expenditures will be amortized in 39 years.

Q. That is the way I understood it the other day. So that through the process of the amortization, the expectation as that the New York Municipal will be reimbursed for all those expenditures on the New York Consolidated property? A. Yes.

Q. Now, the New York Consolidated has — A. And if the city takes over the lines that it has a right to take over after a period of ten years, why it pays the price stipulated in the contract.

Q. But would that include the cost of reconstruction of existing railroads? A. It would give the city the right to take over the third tracks or if they wanted to, take over the whole, they wouldn't pay a second time for the third track, only for what was there before the third track was added.

Q. But suppose the third tracking was all that the city cared to take. There still would be a large enhancement of the original existing structures and properties of the New York Consolidated Company, would there not? It would remain with the New York Consolidated? A. I think so.

Q. You don't think the expenditures on the existing railroads and the equipment for the existing railroads — any of that — would add to the value of the physical structures? A. I don't think so, I don't think so.

Q. They are spending very considerable sums on the original structure, rebuilding it, large parts of it. Would that add any to the value of that? A. It adds to the carrying capacity probably. I don't know as it adds any value to it. In other words, the structure as constructed was capable of carrying two tracks, now they want to put on an additional track and it is necessary to change the number of girders.

Mr. Yeomans.— The contract provides that we shall construct and add to the existing roads as to co-ordinate with the subway so that they can be operated jointly.

Mr. Schuster.—What I can't see is why there is not an enhancement of the existing capital values of physical properties, belonging to the New York Consolidated Railway Company which is being paid for by the New York Municipal Railway Company and the only way in which it can ever get back that expenditure will be through a term of amortization on the Sinking Fund requirement of that contract. You say it won't increase any in your opinion, the value? A. My interpretation, if it is worth anything, is that if the city takes over any of those lines that were enumerated in the contract, as it has a right to take over, it would pay the original cost of those lines or their value at the time of the lease, plus the additions and improvements made through the use of New York Municipal money less what had been amortized. It would not pay twice.

Mr. Schuster.—That would include the additions and enlargements and betterments and extensions to the now existing elevated system? A. Yes, sir.

Q. But the title and ownership of those improvements and betterments would remain in the New York Consolidated Corporation? A. I don't see where it gets the title.

Q. Isn't it now the owner? A. Yes, but it gives the New York Municipal a lien.

Q. True, it gives it a lien but not a lien for reimbursement outside of the Sinking Fund requirement. A. Why should it?

Q. The New York Consolidated is not under any obligation to reimburse out of its capital any of these expenditures. A. The New York Consolidated is really the working case in this transaction. The New York Municipal is simply a medium which is doing the work.

Q. Yes, but here is a large sum of money amounting to more than fifty millions of dollars that is going to be expended on this joint enterprise. According to the statement here under your group "C" the New York Municipal Railway Corporation has expended up to February 29, 1916, six million thirty-eight thousand nine hundred twenty-four dollars and sixty-five cents on the reconstruction of existing railroads for initial operation which are the railroads belonging to the New York Consolidated corporation. A. Yes, sir. All those expenditures that are made by the New

York Municipal must come out of the opening activity of the New York Consolidated.

Q. Let's assume the city avails itself at the end of ten years of the right of purchase. The city will have to be paid cost plus fifteen per cent. and that will include this six million odd dollars. But the enhancement of the physical property which the city then would pay for it would belong to the New York Consolidated and not to the city. A. May I state it in another way?

Q. Why can't you answer me yes or no? A. I can't answer it yes or no. If you will cut it up into parts I will answer.

Q. I can't cut it up in parts. A. I think I can state the matter so as to make it a simple proposition. If the city takes over these lines at the end of ten years, it pays a certain sum for the lines taken over and that sum would be diminished by these amounts that have been expended by the New York Municipal to the extent that they have been amortized.

Q. But at the end of ten years —

Mr. Yeomans.— What I want to explain to you is this:

Mr. Schuster.— Just a moment.

Mr. Yeomans.— All right.

Mr. Schuster.— Now at the end of ten years they would pay 115 per cent., wouldn't they? The city, if it availed itself of its operation. A. (By Witness.) Yes.

Q. (By Schuster.) Now, your idea is that that 115 per cent. would be such part of the total cost to the New York Municipal for everything constructed under the contract less any possible sum by which — A. Thus the Consolidated equity and what is there already.

Q. Now, the amortization in those first ten years, that might tend — if there was such income — might tend to reduce the principle upon which the 115 per cent. would be reckoned, would it not?

If any of these expenditures would be amortized during the first ten years? A. They would be amortized but under the recapture the city pays a flat price at the end of ten years of 115 per cent.

Q. Of the actual cost? A. Yes.

Q. So that there would be no deduction? A. Not in the first ten years.

Q. So that my question, then, I believe is fair, that at the end of ten years, which is the first period the city can recapture, the city should then recapture the property it would pay for that privilege all of the moneys expended by the New York Municipal Railway Corporation. A. Plus 15 per cent.

Q. Plus 15 per cent., not only on the properties which the city actually recapture but as well on the existing properties belonging to the New York Consolidated Corporation. Is not that true? A. Yes.

Q. And the city would not buy that — purchase and acquire any of the properties now belonging to the New York Consolidated? A. Yes, it would.

Q. What? A. The existing structure.

Q. You mean to say that contract provides the New York Consolidated Railway could upon the recapture of the railroads at the end of ten years take all of the elevated roads and the extensions? A. Well, that provision in the contract is designed as I understand it, to permit the city, if the time ever comes when it wants to take over the existing railroads, to take them over without paying twice for the same property. This is to recognize the city's right to take over at the fixed price at the end of ten years for the reconstruction of the railroads and after ten years at a diminished cost after the property is amortized. As a matter of fact some such arrangement would have to be made. You couldn't divorce the third tracking from the balance of the structure.

Q. You can under the contract. A. You can as you are reading the contract but not as the contract intended.

Q. I try to read this contract fairly but I am not trying to find — A. Read some practical meaning into it.

Q. Well, what it contemplated that the New York Consolidated railroad company would part with all its railroads on a recapture? A. It was contemplated that such a thing might happen and if it did the city would want to have its right —

Q. But the city would have to pay in addition to this 115 per cent. whatever the agreed price or value of the physical properties belonging to the New York Consolidated. A. You couldn't get them otherwise.

Q. So that whatever those railroads are enhanced by these expenditures would remain with the owning company and the city would not acquire it except by a separate agreement and arrangement. A. Well, the companies would have to arrange with the city and agree on the price for the existing structures but I can't imagine such a proposition as to the existing roads being appraised at their improved value.

Q. What is to prevent it? Nothing, surely, in the contract. They have value and they have property and title. A. I hope your version is right.

Q. That the courts must recognize. I don't see any escape from it. I wish they might, for the benefit of the city.

Senator Thompson.—Your idea is that by the expenditures of the city money the property of the railroad companies is enhanced in value and the right of recapture of the city does not cover that property. Is that your contention?

Mr. Schuster.—I was thinking of something else.

Senator Thompson.—Your contention is that in the expenditure of the city money certain parts of the railroad property is enhanced in value and that recapture clause does not cover that property so enhanced?

Mr. Schuster.—Except for this: The city by the provision of

Senator Thompson.—There isn't anything in the contract to indicate the city will ever want any portion of the property that is covered by the recapture clause.

Mr. Schuster.—Except for this: The city by the provision of the contract, may not operate the third tracks if they recapture them. Their only value is that of a record value unless they can have some deal with the New York Municipal and it is doubtful, as Mr. Abel suggested, whether the city would even have the right to wreck them.

Senator Thompson.—The recapture clause is —

Mr. Schuster.—What was the object?

Witness.—The object was to recognize this investment by the

Municipal in adding to the value of the existing railroads so that if they ever did come to the point where they could bargain with the company to take over the existing railroads in their entirety, it would not pay a second time for something which had been amortized.

Senator Thompson.— It gave a talking point to the people of the city that it could recapture after ten years.

Mr. Schuster.— Is there anything in the contract, Mr. Abel, whereby the city is to have any — the city could recover any of the existing railroads, no matter how much the expenditure may have been upon them or how much they are enhanced in value?

Witness.— I don't think so.

Q. (By Schuster.) Now do you recall what the estimate was that would be required to be expended in the reconstruction? A. I do not. Do you recall it, Mr. Yeomans?

Mr. Yeomans.— I can't tell you.

Q. (By Schuster.) Was it twenty millions? A. (By witness.) Somewhere in the neighborhood.

Q. You have already expended sixteen million dollars. A. But it is pretty hard to say how far that might go.

Q. What difference does it make? A. It would make a difference from the view point of adding to the existing road. The third tracks add to the existing roads but —

Q. Your contract makes it very specific what is intended by conditions that can be recaptured, does it not? A. I think it makes its conditions, improvements, betterments.

Q. But in no event do you get back those two tracks or the original structure or the present structure. The enlargement of your elevated structure doesn't go with the third track. A. But if the city bargains with the roads to take over the roads in their entirety, all of the existing elevated lines, the city then would take them over at an agreed price but wouldn't pay for the additions and improvements nor for the third tracking if they had already been amortized. The cost would be diminished by whatever the amortization showed.

Mr. Yeomans.—Is not this point—I am just suggesting, I may be wrong — the New York Municipal gave its mortgage for raising of that money. Now, the New York Consolidated gave its mortgage covering all of its property to guarantee that mortgage. Wouldn't it be true if the city only took over these parts that it could take over and the New York Municipal had no other way to take care of its mortgage, then the New York Consolidated has got to take care of it.

Mr. Schuster.— If they take it over.

Mr. Yeomans.— They can't take it over. The New York Municipal would only have one or two ways of paying off its mortgage, by amortization or by getting enough from the city to pay it off.

Mr. Schuster.— In any period in which the city has the right of recapture, the amount of money which the city would have to pay the New York Municipal corporation is fixed by the contract and will retire whatever obligations have been created by the New York Municipal for that purpose, would it not?

Witness.— Provided it is warranted.

Q. (By Schuster.) It will anyway. A. (By witness.) I hope so.

Q. I don't see any other interpretation of the contract. A. The New York Municipal is being linked up with the city owned lines and the city lines that are being operated have no value as revenue. It would make it possible to amortize the city debt as well as the company's debt.

Q. That would be a very apt termination. A. All Brooklyn people wanted to come to New York. I have never yet seen a New Yorker that wanted to go to Brooklyn.

Q. Now your counsel here has reminded me of the fact that the New York Consolidated corporation has guaranteed under its mortgage the payment of the bonds issued by the New York Municipal. A. So has the Brooklyn Rapid Transit Company.

Q. I don't find anywhere on your record that you have submitted to us that you carry in your accounts anywhere any contingent liabilities. Does the Public Service Commission require

any reporting on contingent liabilities or the New York Consolidated? A. I think it is covered generally by a foot note.

Q. I have got the New York Consolidated balance sheet before me and it does not seem to have any explanation whatever. In your accounting methods, set forth by the Public Service Commission, no consideration is given to the contingent liabilities of the company. A. We don't show it in the balance sheet of the New York Consolidated. In cases where the Brooklyn Heights may have guaranteed bonds of the Brooklyn Union Elevated, as a rule those are carried as a foot note in the balance sheet.

Q. Now I notice that in the year ending June 30, 1913, you had added since December 31, 1908, the New York Consolidated had added since December 31, 1908, to its tangible street railway capital installed, four million eight hundred ninety-one thousand, seven hundred sixty-one dollars ten cents. Was that all or any large part of it installed before the consolidation with the New York — A. Let me have the sheet. Your question referred to 1908.

Q. No, I said since 1908. You give your fixed capital — A. If you make it since 1908 I think I will answer the question.

Q. I notice you have in 1913 — there seems to be since 1908 a very substantial increase. A. I can't tell you just what parts of that were expended by the New York Consolidated or by its components, between 1908 and the date of the subway contract, but I have in mind an item which was expended by the New York Consolidated in the early part of 1913, of something like three million two hundred fifty thousand dollars which was to cover the purchase of rolling stock which was owned by the Transit Development Company and which had been leased to the New York Consolidated Company.

Q. That was in 1913? A. Yes, and which might have been charged under the contract except as I explained previously, an equity was deemed just to let the Consolidated pay for it out of its own funds rather than let the New York Municipal pay for it.

Q. Now that New York Consolidated Railroad Company — how did it pay the Transit Development Company? A. In cash.

Q. And was that obtained through the B. R. T. on certificates of indebtedness? A. Yes.

Q. And those certificates of indebtedness are lodged with the Trustee under the mortgage and still held as obligations due the B. R. T.? A. Yes, sir.

Q. The New York Consolidated Railroad Company is not spending any considerable sums of money since 1913 which go to increase its fixed capital. A. Well, not if by considerable you are going into millions. If you are talking in thousands, they do. The New York Consolidated, for instance, is finishing up the costs of the Brighton Beach improvement. That work was well under way, practically finished, at the time **this contract was made** but there was some pending litigation with one of the contractors and the case has not yet been finally adjudicated. When the amounts are determined it will be paid by the New York Consolidated.

Q. And will not in any way be reflected with the contract with the city? A. Yes.

Q. Does the contract No. 4 have the certificates included under the operating provisions of the Sea Beach? A. Yes.

Q. So that the income from the Sea Beach will be part of the income as pooled. A. All of the lines owned and operated by the New York Consolidated and the component companies that were merged into that company, they form part of the lines from which the Brooklyn revenue is derived in which the city participates.

Senator Thompson.—Some lines over there are owned and controlled by the B. R. T.

Witness.—You mean elevated lines?

Senator Thompson.—**Either kind.**

Witness.—The exception is the New Utrecht Avenue Line from its junction with the 38th Street cut and the Culver line from a similar junction. They don't go in, but when the elevated work is complete, which the city has taken — and Gravesend Avenue line from 38th Street, then those elevated lines will be parallel to the Nassau Company's elevated lines. Those lines will then become surface lines and will continue to be operated by the South Brooklyn and the Nassau Companies, respectively, but the overhead line that forms a part of the dual contract and the subway cars will be operated over those elevated extensions, or elevated lines.

Mr. Schuster.— Is the city building that subway? A. No, the city is building those elevated lines that I have referred to.

Q. Well, you have just recently opened the Utrecht line — the other day. A. We ran cars over it Saturday. It is not finished yet.

Q. Is that a part of the line that is now in operation or deemed in operation, under the contracts? A. Yes, from Saturday the revenue taken in on those cars will go into the pool. Prior to Saturday it went to the Nassau Company in its territory.

The passenger gets on at Unionville in the morning — his nickel goes to the —

Mr. Yeomans.— It is a five-cent fare from Unionville to Park Row.

Mr. Schuster.— So that in that portion of the joint their price is in competition with the Brooklyn Rapid Transit Company?

Witness.— Yes.

Mr. Yeomans.— With trolley cars.

Witness.— I think they would abandon those lines if the Public Service Commission would sanction it, so as to cut out that competition.

Mr. Schuster.— The relation seems unusual. I hope you haven't undertaken the impossible.

Senator Thompson.— I don't see how the Brooklyn Rapid Transit can ever get down to thirty-two again.

Mr. Schuster.— Now, Mr. Abel, your group "C" is reconstruction expenditures of existing railroads for initial operation and equipment. That equipment — is that recoverable in any way by the city under the contract? A. (By witness.) Yes, sir.

Q. (By Schuster.) Or is some of that equipment the property of the New York Consolidated? A. Well, if the city wants to take over all the equipment, it can take it over.

Q. No, but this is replacing equipment that the present existing railroads have. A. No, it is adding to it, not replacing.

Q. None of this expenditure for equipment up to February 29,

1916, amounting to seven hundred seventeen thousand seven hundred fourteen dollars and eighteen cents can in any wise be charged by the New York Consolidated Company if the city avails itself of its recapturable right. A. I don't think so.

Q. Referring again to the New York Municipal Corporation's balance, general balance sheet for the year 1913, you carry two items in fixed capital, expenditures for road and equipment and company's contribution to city railroads. That seems to be the end of that characterization and I take it that was a result of the orders of the Public Service Commission to reclassify it. A. The suggestion of the Chief Engineer, I think; that \$108,000.00 is a part of the 6 per cent. discount spent on the municipal bonds that had been distributed by the Chief Engineer.

Mr. Schuster.—I will excuse Mr. Abel now until 2:30 and as Mr. Moss wishes to take up a matter here that he wants to dispose of before recess. Do you know whether Mr. Moss wants the afternoon? We don't want to keep people away from their work. Just a moment. Maybe we want you before tomorrow morning. I don't want to interfere with your earnest efforts to earn your salary.

Witness.—I can't be in two places at one time.

Mr. Abel is excused and leaves the stand.

MR. HENRY B. SEAMAN, having been previously sworn, takes the stand and testifies as follows:

Q. (By Mr. Klein.) Mr. Seaman, you have testified before this Commission previously but you have not told the Commission your experience as an Engineer. A. My experience as relating to my employment with the Public Service Commission was first as Bridge Engineer of the Erie Railroad, later Construction Engineer of the Mohegan Railroad, then as Contractors' Engineer on the old subway in charge of the first section commenced and the first section completed, finally as Consulting Engineer of Bridges in charge of the maintenance and operation of the Brooklyn Bridge with its dense traffic, covered the most important matters which would be brought before the Commission. The fact that I

had been admitted to the practice of law in the State of New York is probably of little importance.

Q. The Committee was furnished by Mr. Harkness of the Public Service Commission, with data bearing on the Duane Street Sewer matter. The data was accompanied by a letter from Mr. Harkness which reads as follows:

"June 5, 1916.

*"Hon. Frank Moss, Counsel to Joint Legislative Committee
to Investigate the Public Service Commission, Wool-
worth Building, City.*

"Sir:

"At a session of the Joint Legislative Committee to investigate the Public Service Commissions held last week, Mr. Henry B. Seaman, formerly Chief Engineer to this Commission, testified with regard to the adjustment of claims on Section No. 9-0-1 of the Brooklyn and Manhattan Loop Lines including the matter of the construction of the Duane Street Sewer. At the conclusion of Mr. Seaman's testimony I stated to the Committee that in 1910 similar statements of Mr. Seaman had been thoroughly investigated in connection with the approval of a modifying agreement by the Board of Estimate and Apportionment and asked permission to file as part of the Committee's record a copy of the proceedings of the Board of Estimate and Apportionment to which I referred. Permission to do so was granted by the Committee.

"I accordingly transmit, to be included in the records of the Joint Committee, a printed extract from the minutes of the Board of Estimate and Apportionment for December 9, 1910 (pages 5448 to 5474 inclusive). These minutes contain the following documents, all in relation to the adjustment of matters relative to Section No. 9-0-1 of the Brooklyn and Manhattan Loop Lines:

"1. Letter of September 27, 1910, from Public Service Commission for the First District to the Board of Estimate and Apportionment.

"2. Proposed agreement between the City of New York, acting by the Public Service Commission for the First District and Bradley Contracting Company, modifying the

contract for the construction of Section No. 9-0-1.

" 3. Report dated October 20, 1910, of Committee of Engineers appointed by the Board of Estimate and Apportionment.

" 4. Letter dated November 15, 1910, from Public Service Commission for the First District to Board of Estimate and Apportionment.

" 5. Further report undated of Committee of Engineers appointed by the Board of Estimate and Apportionment.

" 6. Letter dated November 18, 1910, to Henry B. Seaman from Borough President Cromwell.

" 7. Letter dated November 21, 1910, from Henry B. Seaman to Borough President Cromwell.

" 8. Further report dated November 29, 1910, by majority of Committee of Engineers appointed by Board of Estimate and Apportionment.

" 9. Dissenting report dated December 1, 1910, by Walter Creuzbaur, one of such Committee.

" 10. Letter dated November 28, 1910, from Assistant Counsel Harkness of the Public Service Commission to E. P. Goodrich of the Board of Estimate and Apportionment Committee.

" Respectfully yours,

" (Signed) LeRoy T. Harkness,

" Assistant Counsel."

Does that enumeration complete the record of the Duane Street Sewer contract so far as you know? A. Up to that time but there has been more since part of which should have been included by Mr. Harkness and part of which he was unaware of.

Q. What part should have been included by Mr. Harkness that is not included? I will read a letter from you in reply to Mr. Harkness dated June 7, 1916.

" Mr. Frank Moss, Counsel, Joint Legislative Committee to Investigate Public Service Commission.

" Dear Sir:

" I note in the letter to you from LeRoy T. Harkness, dated June 5, 1916, that he transmits a 'printed abstract of

the minutes of the Board of Estimate and Apportionment for December 9, 1910, (pages 5448 to 5474 inclusive).’ I would say that the majority report (8) of November 29, 1910, was made without giving me a final hearing which I had particularly requested, and I should therefore judge that its purpose was to cover the extraordinary procedure under consideration.

“To have made this record complete Mr. Harkness should also have included a further communication on this subject before the Board of Estimate and Apportionment, printed in the minutes of the Board and reprinted in the ‘City Record’ of December 5, 1913, page 11,323, a copy of which I enclose, i. e., letter of Henry B. Seaman to Borough President Cromwell, dated December 15, 1910.

‘There should also be included in this record, a communication of Henry B. Seaman to Borough President Cromwell dated May 7, 1912 with appendices A. B. C. D and E which have never been printed nor offered elsewhere. I enclose herewith a copy of these.

“In this connection I also enclose a copy of a paper which, as noted in the preface, I have recently been called upon to publish and which contains a chapter entitled, ‘An Extra under the Contract.’ This chapter is the most complete summary of the subject.

“I hereby request your Committee to give this matter a thorough investigation so as to ascertain whether all methods of procedure, and deductions therefrom, were entirely regular and correct.

“Yours truly,
“(Signed) Henry B. Seaman.”

A. The letter from LeRoy Harkness was so scurrilous that it was actionable.

Q. The letter of what date was that? A. November 27, 1910. When I asked McAneny why he put such a letter on record he explained that he had never read it. That letter was written apparently at the request of an Engineer whose plans for a sewer siphon at 110th Street I had been unable to approve. The report of the Committee, headed by Nelson P. Lewis —

Q. Was that engineer employed by the Public Service Commission at the time? A. He was Consulting Engineer of the Borough of Manhattan and was a member of this committee. The report of the Committee headed by Nelson P. Lewis evaded the real issue and, as explained in my letters, in an apparent effort so to speak to draw a hair across the trail, they called attention to the fact that a minor statement in my letter was incorrect. The statement in my letter was based upon information. I saw no reason to disbelieve it then and I have seen no reason to disbelieve it since.

Q. What letter do you refer to? A. My letter to Borough President Cromwell.

Q. Of what date, December 15, 1910? A. No.

Q. Or the final letter of May 17, 1912. You mean the letter not included in Mr. Harkness's memorandum? A. No, the letter that was included.

Q. That is December — A. November 28, 1912.

Q. Oh, Mr. Harkness's letter! A. I saw no reason to disbelieve it then and have been seen no reason to disbelieve since and in fact the statement is proved by the document, itself. That is, Mr. Cravens' memorandum. In regard to these two letters which I have offered, they were letters to Mr. Cromwell, President Cromwell, not intended at the time they were written, for publication, because I believed that the matter would be thoroughly investigated at that time. As the matter was not investigated I wrote my final letter of May 17, 1912, which answers Mr. Harkness in detail but these letters and the appendices are so long and are only intelligible in connection with the letters offered by Mr. Harkness, I would suggest that in covering the subject that the chapter of the paper which I was obliged to present, entitled 'An Extra under the Contract'—

Q. Page 17 of your printed statement. A. — Page 17 of the printed statement — covers the matter I believe, completely from beginning to end.

Q. The facts narrated in that chapter lead up to your resignation from the Commission, didn't they? A. They were one of the contributing causes of my resignation.

Q. Will you tell what lead to your resignation from the Commission? A. In addition to this matter of the raised estimate, if I may so express it —

Q. With reference to the Duane Street sewer? A. In reference to the Duane Street sewer, was also a question of the recommendation of the adoption of revised plans of the Triborough subway. The plans of the Triborough subway had been practically completed when members of the Commission decided to review them in detail, although they had been made under their direction from beginning to end. The ostensible purpose of this revision was to economize. "When the estimated cost of one hundred sixteen million dollars for the proposed subway of the original plan was announced to the Commission, it was distressed at the amount and didn't see how such a sum could be raised. I suggested that it would be easier to raise one hundred sixteen million dollars which would earn interest than it would be to raise fifty million dollars which wouldn't earn interest. The cost of the proposed subway might be 75 per cent. greater than the duplication of the old subway but its earning power was more than double.

The Grand Central Station was the restriction point of the old subway and this had been increased three and one-half times in the new plans. The demand for transit at that point was practically unlimited in rush hours."

Q. You are reading from page 35 of your printed statement, are you? A. Second paragraph.

"The old subway was earning at that time about 6 per cent., and would earn much more in the future. The new subway was therefore a safe investment for the amount of capital needed.

"The plans were then submitted to Mr. Bion J. Arnold of Chicago, and received his general approval and commendation. No other Consulting Engineer was employed. If any changes were made Mr. Arnold would have still further enlarged the plans, rather than to have restricted them. The Commission, however, insisted, even at that late day, upon a general revision, and I suggested, as the first saving in cost, that pipe galleries be abandoned. In order to save time and further expense of design I also proposed (Feb. 16, 1910),

that only the general plans be made over, as the detail plans were typical of the work and, with revised estimates, were sufficient without changes, to enable contractors to make unit price bids. To make new general plans would require only a few weeks, but to make complete details would require a year even with the old details as a guide."

The ostensible purpose of the revision was economy, but when the revision was complete it was found that the new plans cost one hundred nineteen million dollars instead of one hundred sixteen million dollars and that the capacity of the subway was decreased 30 per cent. They advised the purchase of some twelve million dollars of real estate which experience has proved could be resold after completion of the subway for more than it cost.

Q. You mean to say that the one hundred nineteen million dollars excluded the cost that would have been necessary under the original plan of twelve million dollars for real estate or did the twelve million dollars come within the total estimate of one hundred sixteen million dollars? A. The estimates were only for the construction and did not include the real estate.

Q. What did the Commission do when they found the revised plans were costlier than the original? A. The Commission were then at a loss as to know what to do and the only way that presented itself to them was for their Chief Engineer to recommend the adoption of these revised plans.

Q. Did you recommend their adoption? A. I told them that the records showed that I disapproved the plans, that they are not as good as the original plans for economy, were not practicable, based on cost, and that I could not make such a recommendation.

Senator Thompson.—Who did you tell that to? A. I told that to Mr. McCarrol and later I made a statement to the whole commission at a meeting to which I was called. I was then asked by Mr. Eustis who would be responsible in case of collapse of the subway. I said I would take that responsibility. I was then requested to revise my letter of recommendation and include my responsibility to that effect.

Q. (By Klein.) Do you mean you want to know who would

be responsible if the subway under the original plans? A. Under the revised plans.

Q. What lead to that question? A. Simply because I had transmitted the plans merely with a letter of transmission. "I transmit herewith for your adoption a list of drawings which had been prepared in accordance with your instructions," leaving the way there as to whether they should adopt them or not. When they requested me to revise that letter by adding "These drawings have met with my approval except in so far as already stated in my letters to the Commission, or to the Committee," —

Q. That was on the same day of July 12, 1910? A. July 12, 1910. "Matters had reached an acute stage." Page 42. "I had been under severe strain for three years in designing these plans with insufficient help, and for the past six months had practically been through the "third degree" of commission engineering. Of course continuance was impossible, and I informed the Acting Chairman that I would go to Europe for a few weeks and upon my return matters must be entirely changed, or I must resign my position."

I meant by that that I must not be asked to make artificial reports and estimates.

Q. You considered the revised plans — A. The matter of the Duane Street Sewer involved an artificial estimate.

Q. You went to Europe, then? A. "I sailed for Europe the day before the Chairman returned to his office from a similar trip abroad.

"After a trip of four weeks I returned to the office and was immediately sent for by the Chairman, who requested my resignation by the first of the following month. I asked if they wanted my recommendation for the adoption of the revised plans. He replied, 'Of course we expect you to recommend the plans.' I told him I could not make such a recommendation and would present my resignation."

Q. You refer to Chairman Willcox? A. "He was then good enough to tell me that all the Commissioners liked me personally, and twice suggested that I talk with other members of the Commission who were in town. I replied that this was unnecessary, as there was but one course open to me."

Q. When did you resign? A. I presented my resignation on September 23, 1910.

Q. Is this a copy of it printed on page 43 of your printed statement? A. Yes.

Q. Will you read that? A. "September 23rd, 1910.

"The Honorable William R. Willcox, Chairman, Public Service Commission for the First District.

"Dear Sir:

"I hereby resign my position as Chief Engineer of the Public Service Commission, to take effect Oct. 1st, 1910.

"I have long recognized that it would be impracticable for me to take the responsibility of important construction work under existing conditions, and before sailing for Europe on my recent vacation I informed Acting Chairman _____ that such conditions could no longer continue. The disposition to control and direct the detailed management of the Engineering Department without regard to recommendations of the Chief Engineer has led to its utter demoralization.

"This disposition to supersede the Engineer culminated during your recent visit to Europe, when I was expected to approve drawings regardless of my professional opinion, and to recommend the adoption of plans which I had previously made under protest. If this condition continues in the prosecution of work estimated at 120,000,000 dollars, it will mean disaster to the work and to the reputation of those ostensibly responsible for it.

"There should, in my opinion, be individual responsibility at the head of every Department, and proper help and full authority for outlining and conducting its work. Without this no public work can be successfully performed.

"Very truly yours,

(Signed) HENRY B. SEAMAN,

"Chief Engineer."

Q. To whom did you give that resignation in the Commission?
A. I sent it down to the Secretary.

Q. Secretary Whitney? A. Yes.

Q. And what happened thereafter? Were you sent for by any

one? A. No. It was sent to Whitney & Gillespie's office. It appeared in the papers the next morning and was followed by the publication of the statement necessitating an explanation by the Commission, and its "publicity bureau" issued the following in the name of the Acting Chairman: "The resignation of Mr. Seaman was asked for by the Commission some time ago, consequently his letter should be read in that light."

Q. What have you to say in regard to that? A. "This, with other parts of this statement, was so equivocal and incorrect that I knew that it could not have emanated from a man of the Acting Chairman's character, and I so stated to the reporters. I then learned that it had been issued by the Secretary of the Commission.

"This and other publications, even though apparently issued by the Secretary were so serious that I finally found it necessary to make a further statement which I had wished to avoid. It was in part as follows:

" 'The principal cause of my resignation at this time was a difference of opinion as to the propriety of artificially raising an estimate of value of work to be done, in order to meet the demands of a contractor. It may be possible, and sometimes proper, to increase a payment as a matter of expediency but it is not proper to do so under the cloak of an artificial estimate.' "

Q. Was that statement published in the newspapers? A. It was.

Q. Did you therefore have a talk with Commissioner McCarroll? A. Yes, I had repeated talks with McCarroll.

Q. Did you have a talk with him with reference to your pay that was due? A. They wanted me to revise the form of my letter to a simple letter of resignation for a matter of their records. I expressed my willingness to do that provided I kept the records straight. He suggested that I might write a simple letter of resignation and write an additional letter and say what I pleased —

Senator Thompson.—Who said that? A. Mr. McCarroll. After making that arrangement, I told Mr. McCarroll that my check, monthly check, had been held up apparently for the pur-

pose of coercion and he smiled at such a weak effort. If it should be revised it would be revised without coercion; if it should not be revised, no coercion would bring it.

Q. You mean if your letter of resignation should not be revised? A. Yes.

Q. (By Klein.) What followed, Mr. Seaman? A. I returned to the office. Mr. McCarroll had business down town; I returned to the office alone.

Q. You had this conversation at lunch? A. Yes. As I entered the elevator of the Tribune Building I met Mr. Holman, the Auditor.

Q. What is his name? A. Holman. I said, "Holman, bring my check up." He said the Secretary had it, to go in after it. I said, "No, bring it to my office."

Q. Was it customary to bring your check to your office? A. Always. I went to the office and called my secretary to take up the matter of resignation. I had hardly begun with the resignation when the phone rang with Mr. McCarroll on the wire. He stated he had the check and would give it to me as I passed out. I asked him why he should not send it up. He repeated he would give it to me as I passed out and again I asked him why. He said, "We will give it to you after the collection is made." "There is no collection to be made" and with that I hung up the phone and walked out of the room. I asked my secretary to come to my house where I dictated my diary and said I expected to leave that afternoon at 3 o'clock. They had threatened to dismiss me unless I revised the resignation. I told my secretary my dismissal was in their hands.

Q. Who had threatened to dismiss you unless you revised the resignation? A. I think that came through McCarroll or came through a mutual friend. It reached me in some way and I told my secretary that I would leave for Boston on the 3 o'clock train and would return Monday and they could take what action they saw fit. I returned on Monday, which was the third of October and called up my former secretary and asked what action they had taken. He informed me they had taken no action and that the check was waiting for me.

Q. Did you call for it at the office? A. He brought it to me.

Q. During your service as Chief Engineer of the Commission, did your legal judgment conflict with that of the counsel of the Commission in your line of work? A. I was not supposed to have and legal judgment. Mr. Harkness was a young lawyer with two or three years experience. I suppose I had been admitted to the bar when Mr. Harkness was in knickerbockers and I had been also connected with contract work for some thirty years and you imbibe in that time an intuition which you can't get from any book knowledge. I did on one or two occasions express my judgment; my knowledge of law may have influenced that judgment. It was mainly based on my extended experience as an engineer of large work.

Q. Had you practiced law before? A. I never practiced law. I was simply admitted to the bar to assist me in my engineering work.

Q. The stenographer will copy into the record Article III, beginning page 17, entitled "An Extra Under the Contract" which explains the Duane Street sewer incident, which was one of the incidents that induced you to resign.

ARTICLE III.

"AN EXTRA UNDER THE CONTRACT."

On one occasion we faced what was perhaps the most difficult situation which can confront a construction engineer; that of an "extra under the contract" with "reasonable" compensation to the contractor. It illustrated the difficulties which may arise by a division of responsibility — or by underfined authority of the Executive in charge of the work. Owing to the change of plans it had been found necessary to do a piece of construction work — estimated to cost \$165,000.00 — either as an "extra" under one of the existing contracts, or else to advertise it as a new contract, separate from the one already in force.

A clause in the specifications provided that "if additional (i. e., 'extra') work or materials be required, then reasonable value therefor shall be additionally paid to the contractors." To advertise for new bids in this instance would require completed

plans, specifications and forms of contract, as well as time for advertising, and was not practicable because of the consequent delay, but it was also impracticable because of the difficulty in getting true competition against the contractor already upon the work; and if high bids should be received and then thrown out, they would be cited later by the contractor as an evidence of "value" in his claim for the extra compensation.

I endeavored to arrange with the contractor for a fixed sum to complete the work — but he would not take less than \$330,000.00, and this I was unwilling to concede. It was therefore decided to proceed with the additional work as an "extra," according to the clause already cited.

In order to protect the city's interests, as well as for use in closing controversy with the contractor which might occur, I obtained from several prominent Sewer Experts their estimate of the proper cost of the proposed work. These estimates varied from about \$145,000.00 to \$193,000.00, showing that our estimate of \$165,000.00 already made, was a fair medium.

In proceeding with the construction work, the contractor at once (March 2, 1909), claimed that the work must be paid at "cost plus 15 per cent." This would not have been an unreasonable charge provided the work were economically executed; but in case there were any inclination on the part of the contractor to increase the cost for the purpose of increasing the percentage, the specification clause as to "reasonable value" would be operative, and I sent, (March 12, 1909) formal notice to the contractor to that effect.

Shortly after this work was commenced, the Division Engineer in charge of the work reported to me that the contractor was swelling the cost, and thus increasing his percentage. I at once notified the contractor (April 2 and 8, 1909), of this extravagance, and also covered the work with inspectors in order to obtain evidence for trial in case my award of "reasonable value" should be disputed by the contractor upon final settlement.

The effort to obtain evidence was entirely successful, and it was reported to me to be of such a character as would throw the contractor out of court in case of law-suit. I expressed my satisfaction, and directed that additional evidence be obtained if pos-

sible. I was shortly afterward called to account, however, by a member (3) of the Commission for wasting money by "employing too many inspectors." I explained to the Commissioner the purpose of the expense, and stated in a general way what information had been obtained, as well as the result which might be accomplished with it. There was no further criticism of the employment of the inspectors.

Later, however, as the apparent cost of the work continued to increase, another member of the Commission (2) who was also a member of the Committee on this extra work, called my attention to the continued increase, and asked where it would end. No one could foretell the result definitely, and I so stated, but I said I did not propose to pay more than \$193,000.00 (the highest engineer's estimate), even though the apparent cost might run up to exceed that sum. I had already informed his fellow committee-man of the important evidence obtained by the inspectors. He then demanded, however, that I assume control of the contractor's work in all its details, placing the men and giving them detailed instructions as to their work.

The contractor had already desired me to pursue this course, and possibly had also suggested it to the Commissioner (2). A construction engineer, however, knows that such a course would not prevent the contractor's force from swelling the expense, whether by dilatory work or by other connivance, and yet such explicit instructions would make the directing engineer responsible for such a swelled cost, and would relieve the contractor of responsibility, as he naturally desired. It required neither experience in engineering nor knowledge of the law to foresee that these swelled costs thus obtained would be used by the contractor, in his lawsuit for increased cost and percentage, as a "reasonable value" for all work done, and would nullify all the estimates based on experience gained elsewhere, which I had obtained from outside sources. It would also destroy the value of the important evidence already obtained by the inspectors.

The Commissioner (2) was an astute lawyer but my explanation did not satisfy him, nor evidently meet his purpose, and he insisted that I should follow this course of detailed control, as desired by the contractor. This I refused to do. Formal instruc-

tions were finally received by letter from the Commission, directing the Chief Engineer to conduct the work on the "control plan" and I then instructed my assistant in charge of this work to keep the Commissioner (2) informed, and this Commissioner thenceforward gave him instructions as to the handling of the work.

The result was as anticipated. The cost continued to swell, and a high record was established which, because of the detailed instructions given under the Commissioner, destroyed the authority of all estimates, and rendered useless the evidence already obtained by the inspectors.

Here commenced the real difficulties for the Commissioner. The apparent cost of the "extra work" exceeded \$300,000.00 — instead of \$193,000.00, to which I had excepted to limit it — and his explicit control and directions had placed the responsibility for such cost upon him rather than upon the contractor. No preliminary estimates by engineers based on similar experience elsewhere were then admissible, as compared with these actual records of cost made under his direction. It then became necessary for him to make such arrangements for final settlement as would be acceptable to the contractor, as no recourse to law was now possible.

In the process of adjustment which followed, the "extra" was so merged with other claims from the same contractor that its identity became obscured. The contractor, who had been obliged to stop his work for twenty-five months on this section in order to permit the erection of a Municipal Building over the site, claimed additional damages because of this delay. The entire adjustment proceeded, however — the same as had the management of the "extra" — without reference to the Engineering Department, even as to values, and the settlement of these claims were based "on figures presented by the contractor from his books and judged by him as sufficient substantiation of his claims," or, as the Commissioner expressed it, "because he would not take less."

On only one occasion was the Chief Engineer present at a meeting of this committee in its efforts to adjust claims. A bill of extras was then presented, amounting to some \$90,000.00, and was referred to the engineer for approval. He was unable to pass

upon such a bill offhand, and requested that it be sent to his office for detailed examination. The Committee, however, did not send the bill for examination, and the engineer was not requested to attend any more of its meetings.

It is interesting to note the various awards and to compare them with the engineer's estimate of value, which was made shortly afterwards.

	Engineer's Estimate.	Awards.	Excess of Awards.
Maint. of plant (25 months)			
cost \$3,000 .....	.....	\$40,000	\$37,000
Maint. of organization.....	.....	10,000	10,000
Payment of bonds	\$3,000	3,000	.....
Deprivation of bonus .....	.....	15,000	15,000
Interest 15 mo. at 6 per cent. on			
reserve	1,729	1,729	.....
The "extra" (\$165,000) . . .	193,000	260,000	67,000
Other items	71,000	90,000	19,000
			<hr/>
			\$148,000

It will be noticed that in these items the plant which, according to my assistant, cost only about \$3,000 is allowed \$40,000 for maintenance. In justification of this the maintenance of a stable and other items were mentioned; yet the stable was owned by a separate corporation (possibly controlled by these contractors) and the teams had been charged against the work at the daily rate of hire, rather than at actual cost, as they were really hired from an outside corporation with which the city had no contract. It may also be noted that this item of \$40,000 when added to the allowance of \$260,000 for the "extra" amounted to \$300,000, which was the total apparent cost of the "extra" item. When my assistant in charge of the work stated that the contractor had been brought down from \$300,000 to \$260,000 I thought they had done well considering the plight they were in, and wondered how it had been accomplished, but I did not at that time know of the \$40,000 allowed for "maintenance of plant."

When these extras were conceded to the contractor it was expected that he would proceed with his work as though there had

been no delay. Experience on contract work, however, would hardly have justified such expectation unless a specific agreement to that effect had accompanied the concession of the extra. So it also proved in this instance. When the contractor asked the Commissioner (2) to make a new contract for completion he offered to do the work for \$1,435,000 instead of \$1,035,000 which was the engineer's estimate of value based on the contract already in force.

The Commissioner (2) apparently did not care to take the responsibility of closing this item in addition to what he had already conceded to the contractor on the extras, and referred the matter back to me, with instructions to compromise. He knew my views about proceeding under the original contract, and that I considered that no "compromise" was possible until the issue had been raised by instructions to the contractor to proceed with the contract already in force, as he had early expressed to me his willingness to do so. I was unwilling to be responsible for payment to the contractor beyond my estimate, but must follow the Commissioner's instructions, and presumed that he and the contractor had already come to some tentative agreement. I therefore asked the Commissioner what "compromise" he desired. He stated that \$1,250,000 would be satisfactory. This sum was more than \$200,000 beyond my estimate of value which had already been sent to him.

In conference with the contractor I duly obtained this compromise as instructed, and also included an extra of \$29,000 which had been under consideration. Although I had requested instructions to proceed with the contract already in force, still I realized that even this compromise was preferable to asking for new bids, as such bids would be artificially high.

I reported (July 13, 1910) to the Commissioner, the result of the conference with the contractor in a carefully worded letter as follows:

July 13th, 1910.

"The Honorable _____, Commissioner.

"Section 9-0-1.

"Dear Sir:

"The following memorandum of final conference which I

have had this morning with the Bradley Contracting Company on the completion of Section 9-0-1 in accordance with the plans, is respectfully submitted.

“MEMORANDUM.

“Conference on 9-0-1 with William Bradley, Frank Bradley, Bayly Hipkins and attorney Lynch — Mr. Shipman and Mr. Dahm present.

“I had already presented to Mr. Bradley a detailed estimate of \$1,035,000 for completion of 9-0-1, and an additional estimate of \$29,500 for alteration on 9-0-2. The Messrs. Bradley presented their estimate of \$1,435,000 and showed that the other three bids which had been originally received for Contract 9-0-1 were 30 per cent. higher than theirs. They stated that the reason for their low bid was that this work would weave in with sections 9-0-5 and 9-0-4, their other contracts, and without these other contracts their bid would be as high as the other bidders on these sections, and therefore argued, since their other work has practically completed, the propriety of their bid of \$1,435,000.

“After an extended discussion, Mr. Bradley offered to lower his bid to \$1,300,000. This I refused to consider. Finally as a last resort he lowered his bulk sum bid to \$1,250,000 to include the work on section 9-0-2.

“I asked that a separate item be made of the work to be done under the Municipal Building, in case that were not included, and it was decided that if it were not included, it would be deducted from their bid in the ratio as shown in our estimate.

“I would here note that the difference between Bradley's bid and our estimate was \$400,000 that an even division would make their bid \$1,235,000. If \$29,000 is added to this to include the work on 9-0-2, it would make a compromise offer of \$1,264,000. Mr. Bradley's offer is therefore slightly less than an even compromise.

“It may also be noted that there remains to be done on section 9-0-1, under the present contract, about \$750,000

worth of work. If Bradley were to claim his unearned profits of 25 per cent. on this, it would mean a profit to him on this account of \$187,000.

"I have urged that the contractor be required to proceed under his original contract. If this is not practicable, it would then be a question of whether Bradley's work is lower than a new bid would be for the same work, including his unearned profits. As near as I can judge, it is about an even figure.

"You will note my final statement that I consider it about an even thing as to whether we accept the Bradley Contracting Company's offer or advertise for new bids. Of course the acceptance of the Bradley Company's offer will save some time.

"Very truly yours,

"(Signed) HENRY B. SEAMAN,

"Chief Engineer."

I had not wished to offend, so in the letter I had said everything possibly favorable, but had recorded my early desire to proceed under the original contract, and had also showed by inference that \$1,250,000 was equivalent to giving him a bonus of \$187,000 on this item alone, to say nothing of what had already been given on the extras, and I could not recommend that the compromise be adopted. If with this full information, the Commission desired to make the award there must be some reason for it which I could not understand.

I was then called before the Commission, apparently for an explanation, and was asked by the Commissioner (2) if there were "two profits" in the proposition. The question seemed superfluous in view of the \$187,000 bonus which I had mentioned and I wondered if there was a lingering doubt that I might take the responsibility of this payment, but I could only reply that there certainly were "two profits" in it.

After the Commissioner (2) found that I would not father this payment, he said to one of my assistants that I had put them in a hole. How had I put them in a hole? Did a lawyer expect an engineer to recommend such an excess payment on the basis of

value? Were they prevented from making this payment by a mere candid statement of fact? Had my letter been too frank and outspoken? After I had given him my estimate of \$1,035,000 why was I called upon to compromise with the contractor for \$1,250,000? With this knowledge of actual value the Commissioner was better prepared to effect the compromise himself than he had been in the case of the extras where no such knowledge of value had been given him.

On what basis can an engineer justify payment beyond his estimate? There was not even a law suit in contemplation at that time, and the contractor had signified to me his willingness to proceed if so instructed. In city contracts more money may be made by "compromising" law suits than by fulfilling contracts. Claims made beyond all reason serve well the purpose of compromise. They permit the compromising lawyer to show an apparent large saving, whereas the actual sacrifice and loss to the city can only be shown by the estimate of the engineer.

Why in the present instance a new contract was sought, or even permitted, by the Commission had never been clear to me, although I could well understand why the contractor preferred a new contract. as such modifications almost invariably result to the contractor's advantage. When he had signified to me his willingness to proceed under the contract then in force, I did not entertain his suggestion for a modification because it would have incurred needless delay and expense, and any such acquiescence on my part would have encouraged his refusal to proceed. I had requested permission to instruct him to proceed with his work and was awaiting such authority when I learned that the Commissioner, without my knowledge, had conceded the extra claims.

As my letter (July 13, 1910), and my statement that there were "two profits" did not justify the concession of the unearned \$200,000 to the contractor, it it was then necessary for the Commissioner to take up the matter anew. The conferences had already gone so far that the contractor naturally forgot his willingness to proceed under the original agreement and with the estimate of \$1,035,000 on record, it was difficult to justify further payment without explanation.

Generally speaking, it may be possible, and sometimes proper, to increase the award to a contractor as a matter of expediency in

order to avoid greater expense, but it is not necessary, nor is it proper, to do so under the cloak of an artificial estimate. If the price is increased it should be stated frankly that it is for the purpose of compromise; that the payments already conceded on extras for the purpose of satisfying the contractor and allowing the work to proceed on the original basis, had failed of their purpose, and that further concession was still necessary.

All this would have been avoided if this unnecessary dickering had not been commenced. Under such circumstances a settlement after the work is completed will award to the contractor only what is his due, while a dicker during the progress of the work concededly pays a heavy bonus, "because he would not take less."

At about this time, during a short absence from the office, I wrote the Acting Chairman that I could do nothing further on the subject, saying, in part, "I think the contractor should have been notified to proceed with the contract. I do not see how we can pay him unearned profits when there is an opportunity for him to earn them."

The only remaining alternative for the Commission was to make the best of a bad situation. If \$1,250,000 was not justified in payment for \$1,035,000 worth of work, a modified estimate of \$1,150,000 would perhaps justify his course, and at least be a further saving of \$100,000 on its face. During my absence the Acting Chief Engineer was called upon to take up the matter anew. To this end \$51,953 was added to my estimate and additional work or uncertain value was included in the new contract. Then a settlement was made for \$1,150,000. When I returned to my office the Acting Chief Engineer handed me the following memorandum, at the same time expressing his resentment at what he had been called upon to do. He then left for a vacation to recuperate from the strain under which he had been acting.

" MEMORANDUM.

" Monday, July 25th, 1910, Mr. Frank Bradley and Mr. Hipkins called by appointment to meet Mr. Dahm and myself in reference to the modified contract for section No. 9-0-1 of the Brooklyn Loop lines. After going over the mat-

ter very carefully, the figures of the Public Service Commission estimate were modified as follows:

Total amount of Estimate.....	\$1,035,009
Add for error in Ducts.....	3,651

Making	\$1,038,660
Increased by 5 per cent. for each unit price.....	51,933

Making total of.....	\$1,090,593
Add the Estimate to complete contract 9-0-2....	30,000

Total	\$1,120,593
Add for the necessity of raising pipe, due to change in street grade	10,000

Making a total finally of.....	\$1,130,593
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"After discussing the matter further with Mr. Bradley, the question was raised as to underpinning. Mr. Bradley claimed that as underpinning was carried by the price of excavation, he did not consider the yardage of excavation was sufficient to carry this underpinning, and I finally informed Mr. Bradley that we would accept, in round numbers \$1,150,000 as a basis for continuing his work on a modified contract, and that I would so recommend to the Commission.

"This meeting was called at the suggestion of the Commissioner in order to see if I could not get Bradley to recede from his position which, as I understood, was that his own figures were \$1,250,000.

"(Signed) ALFRED CRAVEN."

The Acting Chief Engineer had followed my own precedent in sending a "memorandum" to the Commission. It showed clearly on its face what was done; the manner of raising the estimate 5 per cent.; of allowing the round sum of \$10,000 for raising pipes, as well as making other modifications, and of the ultimate addition of some \$20,000 till the fixed sum of \$1,150.00 was reached "as a basis of continuing his (the Contractor's) work." The "increase by 5 per cent." was as plain upon his memorandum as was the bonus of \$187,000 in my letter of July 13, 1910. If

my letter had been so candid as to "put them in a hole" it is unfortunate that the Commissioner did not feel that this candid "memorandum" also "put them in a hole," for it probably would have thus saved the city the excess payments.

Before finally accepting this reduced offer of \$1,150,000 the contractor came to me to argue for \$1,250,000 stating that he "would not take less." I suggested that if he did not accept what the commission offered he might take still less if the matter were placed in my hands.

The Commissioner explained in granting the concessions that the contractor "would not take less." It was interesting to note in this connection that he actually did take \$25,000 less when the matter was later laid before the Board of Estimate. When I was first informed of this, the sum was placed at \$50,000 which I had said was very satisfactory.

The subject should hardly be closed without reference to methods pursued by the "publicity bureau" of the Commission, which concealed from the public the true facts. In the Brooklyn Daily Eagle of March 13, 1911, there appeared the following: "In the original estimate (which) Mr. Seaman submitted as the cost of construction of this section of the loop his figures were \$100,000 more than the figures on which the controversy was settled by the Board of Estimate."

Inasmuch as the "memorandum" given above, showed that the original estimate before it was raised amounted to \$1,035,000 and on the same sheet showed that the "figures on which the controversy was settled" were \$1,150,000 the baldness of the statement is apparent. It is inconceivable that any member (4) of the Commission knew of the promulgation of this statement, but unfortunate that their good name should be so jeopardized.

This closed the incident of the Duane Street Sewer.

Q. (By Klein.) Under that contract you say that the Public Service Commission allowed Contractor Bradley how much more than he should have received in your judgment? A. (By Witness.) Well, they proposed to allow him \$200,000 more than his contract called for.

Q. Who proposed that? A. Mr. Bassett.

Q. Commissioner Bassett? A. I refused to give it my approval.

Q. Did he give any reason for the proposal? A. He called it a compromise pure and simple. My position was that the contractor should be obliged to fulfill his contract and I wanted permission to instruct him to so proceed. While I was awaiting for such permission, the contractor went to Bradley and wanted \$500,000 more than my estimate, which was \$1,035,000.

Q. You say the contractor went to Bradley? Went to him direct? A. I mean he went to Commissioner Bassett.

Q. What happened? A. I asked Mr. Bassett what compromise would be acceptable to him, what compromise he desired, and he named the figure of \$1,250,000. I then called the contractor to my office with several of my assistants in order that they might see the entire procedure. I brought the contractor down to \$1,250,000 and then transmitted the memorandum without approval to the Commission as to what had been done. I was then called before the Commission and asked if I considered there were two profits in this compromise. I said "There certainly are two profits." The Commissioner then or soon afterwards said that I had put them in a hole by not recommending that compromise.

Senator Thompon.—In other words, they wanted you to carry the bag. A. I never fully understood it. Mr. Bassett knew I was opposed to the compromise.

Senator Thompson.—He wanted you to take the responsibility. A. I couldn't do it.

Senator Thompson.—At that time he wanted to originate the question that the Chief Engineer has to take the responsibility about something he knows nothing about and can't explain in public.

Q. (By Klein.) Mr. Seaman, you have some memoranda, here, some letters, that you wish to introduce into the record. A. Those are really a part of Harkness's introduction.

Q. Did you say these were not furnished by Mr. Harkness to complete the record on the Duane Street Sewer? A. The appendices need not be included. They are on record in the Manhattan Borough President's office. If memorandum is made that they are on record at the Borough President's office in Richmond I think that will be all that is necessary.

Q. This includes letter of N. P. Lewis to Mayor McClellan of March 8, 1909; letter of H. B. Seaman to Public Service Commission of March 12, 1909; letter of N. P. Lewis to Mayor McClellan of March 17, 1909; letter of H. B. Seaman to Public Service Commission of March 19, 1909 and letter of Henry B. Seaman to N. P. Lewis of March 22, 1909.

Appendix B. includes letter of Geo. McAneny, President of the Borough of Manhattan to Wm. McCarroll of January 26, 1910; letter of L. D. Fouquet, Division Engineer to Henry B. Seaman dated March 10, 1910; letter of Travis H. Whitney, Secretary Public Service Commission to President McAneny, dated July 15, 1910; letter of Henry B. Seaman to the Public Service Commission dated July 20, 1910.

Appendix C includes letter of Bradley Construction Company to A. L. Schaeffer, dated March 2, 1909; letter of Henry B. Seaman to Bradley Construction Company, dated March 12, 1909; letter of Henry B. Seaman to Bradley Construction Company, dated March 30, 1909; letter of Bradley to H. B. Seaman, dated April 2, 1909; Henry B. Seaman to Bradley of April 2, 1909; Bradley to H. B. Seaman, April 3, 1909; diary of Dennis Dugan, April 7, 1909; letter H. B. Seaman to Bradley Construction Company, dated April 8, 1909. Those, I take it, were checking up Bradley's work on the Duane Street Sewer.

Appendix D includes letter of Henry B. Seaman to E. M. Bassett, dated July 7, 1910; E. M. Bassett to H. B. Seaman, July 8, 1910; E. M. Bassett to H. B. Seaman, July 11, 1910; Henry B. Seaman to E. M. Bassett, July 13, 1910; H. B. Seaman to Public Service Commission of July 19, 1910; Henry B. Seaman to Wm. McCarroll of July 25, 1910; Alfred Craven, memorandum, July 25, 1910.

Appendix E. includes letter of E. M. Bassett to H. B. Seaman, dated July 29, 1910.

In the letters you furnished the Commission to be included in the records is one of December 15, 1910, your letter to Borough President Cromwell of Richmond, and one of May 17, 1912, your letter to Borough President Cromwell, also. A. If you are about through I would like to state that I have felt obliged to publish this paper.

Q. That is your document entitled, "An Impossible Engineering Position" referring to Chief Engineer of the Public Service Commission? A. Much to my regret. The paper was written in response to professional request; it was filed with the American Institute of Consulting Engineers as a matter of professional record. Aspersions by Mr. Wm. R. Willcox, former Chairman of the Commission necessitated its publication in order that there might be no misunderstanding as to the causes of surrounding circumstances.

Q. You asked to make a memorandum with regard to a plan of saving that Mr. Harkness said was made on the Lexington Avenue line. You furnished that memorandum but a copy of that is not here. A. If the contracts were re-let — readvertised.

Q. He said something about Mr. Craven having — A. Mr. Craven cut down the plans, which was perfectly proper. All the plans which I had refused to approve and were unduly expensive — I might not have followed all his revisions. The Rapid Transit Commission disapproved of the old subway's 2 inches of space and increased the head rooms in their own plans about eight or ten inches. Neither would I put columns in the new subway, but for all that, whatever was paid to the contractor by those bids which were not readvertised, was according to the figures which were given you of prices about 15.4 higher than it would have been if the contracts had been readvertised.

Q. On the basis of the unit price?

Senator Thompson.— Did you agree with the witness we had here, Mr. McBean, who said that the price of \$17.00 per ton for excavation was too high? A. I think the cost of excavating material varies very much. According to the methods necessary, whether it is pneumatic or otherwise. Mr. McBean knows thoroughly the cost of doing work of that kind.

Senator Thompson.— He is a competent man on that? A. Yes.

Senator Thompson.— One other question occurred to me. How much salary were you drawing at that time? A. Fifteen thousand dollars a year.

Senator Thompson.— Was your successor Mr. Craven? A. He was.

Senator Thompson.— What was he drawing? A. Seven thousand and five hundred dollars.

Senator Thompson.— He was given a place as — A. As acting Chief Engineer for a year; at the end of a year he was appointed Chief Engineer at fifteen thousand dollars.

Senator Thompson.— Afterwards was increased to twenty thousand dollars. A. Was increased to twenty thousand dollars.

Q. (By Klein.) I find Appendix E — A. If you are otherwise through there is one paragraph that I would like to read because of its great importance in my whole work with the Commission.

Senator Thompson.— We will take that pamphlet. A. “Soon after my selection as Chief Engineer of the Commission I was called upon to look over the subway plans which were then under construction, and I revised those plans.” Page 9, this is. “One million dollars was saved in the contract price of the work which had been already awarded for ten million dollars. At the same time the train capacity was increased 25 per cent., and the passenger capacity much more than that.”

“Shortly afterwards the Commission went to Albany where, with the up-state Commission, it dined with the Governor. Upon their return to New York I was called to the office of one of the Commissioners (2) who said, “Seaman, your work was highly commended at Albany. I am afraid you are going to get more out of this than we are.” That is the key to the whole situation.

Senator Thompson.— You made a reply to that, didn't you? A. I replied, “Mr. Bassett, I am working for the Commission. If the Commission should fail, I shall fail. If the Commission succeeds, I shall have all the success I desire.” His remark, however, made me somewhat apprehensive of what might develop later.

Senator Thompson.— The salary of the Chief Engineer of the

Public Service Commission of this District is subordinate under a department of the State Government; is twice the salary of the Governor of the State; is once and a third the salary of the members of the Commission under which he acts; is once and a third the salary of a Commissioner appointed on account of his fitness as an engineer and his experience as an engineer who is now serving in this district and who was a successful engineer by all the standards of measurement that we laymen have; it is twice the salary of an Interstate Commerce Commissioner having charge of the entire administration of the Interstate Commerce law of the United States government; it is pretty nearly three times the salary of the State Engineer and Surveyor who has charge, and is the highest officer in the State employed by the people professionally from that vocation. I just want that on the record. I want to say, too, that the State Engineer has had charge of the construction of the improvement of the Erie Canal which involves almost as much money as this subway construction here and to the layman appears to be equally difficult, in the construction of locks and handling of hydraulic matters and all that sort of thing to which he gives his time and attention and I don't remember of any time when the people started out to employ an engineer for this place that there was not more than one applicant for the position. A. Mr. Chairman, if I can make a statement as Engineer, this is the most difficult engineering work in the world. Perhaps I am partial, but I am inclined to think that an engineer who can carry on this work intelligently and honestly would be a cheap man at fifty thousand dollars a year. The Chief Engineer of the Interborough and of the B. R. T. receive twenty-five thousand dollars a year, with a permanent position. This position is temporary.

Senator Thompson.— We will suspend until half past two.

Suspension.

AFTERNOON SESSION.

Meeting convened at 3 o'clock, Senator Thompson in the Chair.

MR. WILLIAM P. CHAPMAN takes the stand, and having been duly sworn, testifies as follows:

Q. (By Mr. Klein.) Have you a statement in response to a subpoena from this Committee to Mr. Rogers, of the Tribune Association? A. Yes, sir. Mr. Rogers is just recovering from a serious illness and is unable to be here this afternoon. Accordingly he has prepared and sent over the statement.

Q. Do you want Mr. Chapman to read the statement, Mr. Chairman? A. I think so.

Mr. Chapman reads the statement which is as follows:

"Statement of G. Vernor Rogers, Vice-President of The Tribune Association, with relation to negotiations between The Tribune Association and the Public Service Commission for the First District, State of New York, with regard to the renewal of the Commission's lease from The Tribune Association of space in The Tribune Building, 154 Nassau Street, New York City.

"I am the Vice-President of The Tribune Association, the owner of The Tribune Building, 154 Nassau Street, New York City. For several years past, in fact from within a year after the organization of the Public Service Commission, the Public Service Commission for the First District has rented space and has had practically its entire offices in The Tribune Building. This space has been rented under leases which have been renewed and changed from time to time as the Commission took more space or gave up space. In January, 1916, the Commission had under lease from The Tribune Association 68,000 square feet of space under leases, all of which expired on May 1, 1916. These leases contained a provision by the terms of which the Commission was to notify The Tribune Association before the end of January, 1916, as to whether or not they would renew their leases.

"On or about January 10, 1916, Mr. Mason, the Building Manager of The Tribune Association, and myself, called on

Mr. Travis H. Whitney, the Secretary of the Commission, regarding the renewal of the Commission's lease for the space it was occupying in The Tribune Building. Mr. Whitney stated that the Commission was not in a position to give a definite answer at that time, but promised to let us know as soon as anything definite was determined. I called his attention to the provision in the lease stated above with regard to intention to renew. Mr. Whitney then stated that in his opinion the Commission would probably not renew the lease. He gave no reasons for this opinion.

"A few days after this, one of the reporters for The Tribune interviewed Mr. Whitney regarding the Commission moving to other quarters and I am informed that in that conversation Mr. Whitney stated that one of the reasons why they wished to move to other quarters was that they could not get space enough to accommodate them in The Tribune Building. Upon learning of this statement I had Mr. Mason send a letter to Mr. Whitney, dated January 14, 1916, a copy of which is hereto annexed, marked "Exhibit A."

Shall I read this letter into the record?

Mr. Klein.— Yes.

"January 14th, 1916.

"Mr. Travis H. Whitney, Secretary,
 "Public Service Commission for the First District,
 "154 Nassau Street,
 "New York City.
 "Dear Sir:

"I have been informed, that in a recent conversation, you gave as one of the principle reasons for which the Public Service Commission is considering removing their offices from this building was that they required additional space, and which we were unable to give them.

"In this connection I wish to call your attention to the fact that we have had one room containing about 1800 square feet which has been vacant for several months, and could have been taken on by the Commission at any time; also after May 1st, 1916, when the leases of a number of our tenants on the 17th and 19th floors expire, it will be possible to give the

Commission several hundred additional square feet of space, and by taking out the present dividing partitions, arrange the space on these floors in large rooms as desired by your Engineering Department.

"On account of this being the renting season for offices, it will be necessary that you let us know within the next few days if the Commission is interested in this matter, and if so I will be glad to work out in connection with your Engineering Department a plan in detail showing the exact amount of additional space we could arrange to give you, and when it could be obtained.

"Yours very truly,

"THE TRIBUNE ASSOCIATION,

"D. A. MASON,

"Building Manager."

On Saturday morning, January 29, I learned that the Public Service Commission was contemplating giving up their space in The Tribune Building and leasing quarters in the Equitable Building, 120 Broadway. I thereupon caused a letter to be sent to the Commission, making an offer as to a renewal of the lease and stating reasons why such renewal would be advantageous to the Commission, a copy of which letter is hereto annexed, marked "Exhibit B."

"January 29th, 1916.

"Public Service Commission,

"For the First District of New York,

"154 Nassau Street, New York.

"Gentlemen:

"We have been informed that your Commission believes that it can rent space for its offices in another office building at a lower rental than it is at present paying for its offices in The Tribune Building and that it has made a tentative offer of \$100,000 per year for two floors in the Equitable Building, 120 Broadway.

"The Tribune Association hereby offers to lease to you, for \$99,800 per annum space equivalent to that covered by such tentative offer made by you, and asks leave to be noti-

fied of any hearing which your Commission will hold at which the question of new renting arrangements will be discussed.

"At such hearing we desire to present arguments for the purpose of convincing you that it will be in the interests of your Commission to remain in The Tribune Building for reasons both of convenience and economy. As to the convenience of the Tribune Building for the purposes of your Commission, we desire to call your attention to its proximity to subway and elevated railway stations, as well as the departments of the New York City Governments. There are many other respects in which this building is peculiarly adapted to your Commission's needs and we wish to present arguments with respect thereto.

"Not only is our offer for equivalent space lower than that contained in your tentative offer for space in the Equitable Building, but by remaining in this building the Commission will be saved the large expenses of moving its offices and the loss of time incidental to such change of location.

"Yours very truly,

"THE NEW YORK TRIBUNE,

"GVR/R

"By General Manager."

I suppose the original was signed, this was taken from the office copy which was without signature.

"I also requested Mr. Mason, in connection with Mr. Frederick Platt, an architect, and Messrs. William P. Chapman, Jr., and Edward L. Stevens, of Sacket, Chapman & Stevens, attorneys for The Tribune Association, to find out if possible the amount of space the Commission was to occupy and the rates charged for space in the Equitable Building and also to give me a report as to the comparison between the space available for the Commission's purposes in the Equitable Building and in The Tribune Building, especially with regard to light and arrangements for the various departments of the Commission.

"On Monday, January 31, I had Mr. Chapman telephone Mr. Whitney to learn if there was to be a public hearing upon the question of change of location of the offices of the Com-

mission. In accordance with Mr. Whitney's suggestion, Mr. Chapman caused a letter to be written to Mr. Whitney on that day, a copy of which is hereto annexed, marked 'Exhibit C.'"

This is a letter of my firm.

"January 31, 1916.

"Travis H. Whitney, Esq.,

"Secretary of the Public Service Commission for the First
District, State of New York,

"154 Nassau Street.

"Dear Sir:

"Referring to the telephone conversation just had between you and Mr. Chapman as to Mr. Chapman's inquiry whether there would be a hearing upon the suggested change of the quarters occupied by the Public Service Commission for the First District from this building to another building, we would say that The Tribune Association trusts that it may have an opportunity to be heard in the matter and present it more fully than it has yet done before the Commission reaches a decision.

"There are several matters of fact which we think it would be of advantage for the Commission to be made cognizant of and which would be likely to affect its judgment.

"Yours very truly,

"SACKETT, CHAPMAN & STEVENS,

"2-L

"Attorneys for The Tribune Association."

"At the telephoned suggestion of Mr. Whitney's secretary, on Tuesday, February 1, 1916, Mr. Chapman, Mr. Mason and myself called at Mr. Whitney's office and there saw Mr. Whitney and Public Service Commissioner Hodge. We presented at that time plans of the building showing proposed alterations and re-arrangements of partitions on some of the floors so as to enable the Commission to concentrate its draughting departments and secure additional lighting facilities and also to re-arrange the Commissioners' rooms, so that there might be a room for each Commissioner and for each Commissioner's secretary adjoining the rooms of the Com-

mission. He informed them of the additional space in the building that would be available beginning May 1, 1916, when the leases expired of some of the tenants of The Tribune Building then in occupation. The discussion was at first general and then, at the suggestion of Commissioner Hodge, Mr. Mason and myself took up the floor plans in detail of each floor with them and showed just exactly what new space would be available and what changes could be made. Before going over the matter in detail, Mr. Chapman withdrew.

"Commissioner Hodge said that he would submit the matter to the Commission's Engineer for his investigation and report and would see us about the matter later.

"About a week later Mr. Mason and myself met Commissioner Hayward, Commissioner Hodge and Secretary Whitney in Commissioner Hayward's office to discuss with them the proposed changes suggested in the building and at this time I made them a definite offer to lease all space required by the Commission in this building at a flat rate of \$1.46 per square foot and that The Tribune Association would make the alterations which we had suggested in order to meet the requirements of the Commission. They stated that they would take this offer under consideration and let us know the Commission's decision later. A few days after this Commissioner Hodge's secretary telephoned Mr. Mason that Commissioner Hodge would see him in regard to the question of the lease and, accompanied by Mr. Mason, I called at Commissioner Hodge's office and he stated that the Commission had decided to accept the proposition of the Equitable Building Corporation and remove its offices to that building. He assured us at that time that the Commission's only reason for moving was that it had received a better offer financially and that it would be saving money by moving. That conversation took place on Thursday or Friday, February 10 or 11, 1916.

"On February 11, 1916, I was informed that the Commission would give us another hearing on the matter of renewing the lease and I made arrangements to call with Mr. Mason at Commissioner Hodge's office on Monday morning at ten o'clock. At that time Mr. Mason and myself called on

Commissioner Hodge and he asked us what we had to say in the matter. I told him that we would reduce our price to a flat rate of \$1.35 per square foot and that the new lease could contain a provision that the Commission could give up any rooms, not to exceed 10 per cent. of the total floor space occupied by it during any one month, before the expiration of the lease in case the Commission should decide to move into any building owned by New York City. I assured Mr. Hodge that The Tribune Association would co-operate with the Commission in every way possible to enable the taxpayers to save money with respect to the Commission's rents.

"On February 16, I requested Mr. Mason to write a letter to the Commission offering on behalf of The Tribune Association to renew the existing leases for space in The Tribune Building at a flat rate of \$1.30 per sq. ft. and to repeat the offer of putting a clause in the lease as to giving up rooms, not exceeding 10 per cent. of total floor space in any month, before the expiration of the lease, in case the Commission should decide to move into any building owned by New York City. I am informed by Mr. Mason that he prepared such a letter, but that when he took it to Commissioner Hodge to deliver it, he was informed by Commissioner Hodge that the Commission had signed a lease for space in the Equitable Building.

"Dated, New York, June 26, 1916.

"(Signed.) C. V. ROGERS."

Mr. Klein.—That is all you know about the matter, Mr. Chapman? A. (By witness.) That is Mr. Rogers' statement.

Q. (By Klein.) Did you have any part in negotiations representing the law firm? A. Yes, as stated by Mr. Rogers in the statement.

Q. I notice when the Tribune Association offered space at \$1.35 Commissioner Hodge had said that they were going to move to the Equitable Building. Was that offer of of \$1.35 made to meet any offer that the Equitable Building had made at that time? A. I can't answer that question. I dropped out of the negotiations at

that time. You may have noticed on page 3 of this statement, "Before going over the matter in detail, Mr. Chapman withdrew."

Senator Lawson.—As a matter of fact you did not have a hearing before the full Commission? A. Not before the full Commission, no.

Senator Lawson.—All you had were these individual meetings with Commissioner Hodge; you never had any hearing before the full Commission on the question, although they promised that they would give you such a hearing. A. I can't say there was a definite promise.

Senator Lawson.—You requested a full hearing and they said they would give it consideration. A. The letter of January 29th by Mr. Rogers and the letter of my firm written by myself, January 31, were a request for a hearing and in response to that request Mr. Whitney's secretary, I think, phoned to me and said that if I would come up they would see me. I then went up to Mr. Rogers' and saw Commissioner Hodge and Secretary Whitney, who was then Secretary of the Commission.

Senator Lawson.—That is as far as you ever got to a hearing before the full commission.

Mr. Klein.—Your lowest offer was \$1.30 a sq. ft. A. Yes.

Q. That was on February 16th. A. As stated in Mr. Rogers' statement on the last page.

Q. Do you know if that offer is lower than the rate that the Public Service Commission now pays in the Equitable Building? A. I don't know what rate they now pay.

Q. Did you understand from Commissioner Hodge that the Public Service Commission was negotiating only for space in the Equitable Building or for space in any other building at the same time? A. I don't know that any other building was definitely mentioned. I knew that—at least I was informed that—they were negotiating with the Equitable Building.

Q. Well, I think Mr. Mason will be able to clear that up.

Mr. Chapman leaves the stand which is taken by Mr. Mason, who testifies as follows:

Q. (By Klein.) Mr. Mason, will you tell your full name? A. Daniel A. Mason.

Q. You are superintendent of the Tribune Building? A. I am.

Q. How long have you occupied that position? A. Since January 19, 1909.

Q. Did you hear the statement read by Mr. Chapman sworn to by Mr. Rogers? A. I did.

Q. Does it concur with your understanding of the negotiations as stated? A. It does.

Q. When that offer of \$1.35 per sq. ft. was made, had the Public Service Commission received an offer from the Equitable Building at that time or before that time? A. Why I don't know just when they received their offers.

Q. Didn't Commissioner Hodge say that they had an offer of \$1.39 a sq. ft. from the Equitable Building? A. He told us that in one of our interviews.

Q. And you met it with an offer of \$1.30 a sq. ft. There was no contract with the Equitable Building at that time. Why did the Tribune Building then reduce its rate to \$1.30 a sq. ft.? A. Because we wanted to keep the Public Service Commission there and on reconsidering the matter we found we could cut down the price.

Q. There had been no counter offer made by the Equitable Building? A. Not to my knowledge.

Q. What rate does the Public Service Commission now pay in the Equitable Building? A. I don't know.

Q. The negotiating included not only space in the Equitable Building but in the City Investing Building? A. As Commissioner Hodge informed me at that time.

Q. How much space did they want? A. He said there were two floors in the Equitable Building amounting to some 62 or 63 thousand square feet, about 18,000 in the City Investing Building.

Q. Although 80,000 square feet. Could you have supplied 80,000 square feet in the Tribune Building? A. We could.

Q. How much space did the Public Service Commission occupy in the Tribune Building? A. 65,000 square feet.

Q. In fact they occupied several floors in the building? A. They did.

Q. Complete floors? A. Yes.

Q. What was the rental up to the time the Commission moved from the building? At what rate per square foot? A. \$1.60.

Q. You thought the Public Service Commission could save money by staying in the building, didn't you? A. We did.

Q. Both by reduction of rent and saving moving charges. A. Yes, sir.

Mr. Moss.—Could have more space? A. They could have more space.

Q. (By Klein.) That 18,000 sq. ft. in the City Investing Building—how did the Equitable Building come to offer that to the Public Service Commission, do you know? A. Yes. As I am informed this was space that was formerly occupied by the Guggenheim interests. They moved to the Equitable Building. The same corporation assumed the lease of the City Investing Building.

Q. Which had how much longer to run? A. 2 years.

Q. And the Public Service Commission put some of its force in that City Investing Building? A. Yes.

Q. Has any part of the Public Service Commission moved to the City Investing Building? A. I believe not.

Q. Do you know why? Have you been told why? A. Only as I was informed by one of the employees of the Public Service Commission?

Q. What is that information? A. That the owners of the City Investing Building objected to making the alteration required.

Q. There were partitions in that 18,000 sq. ft. that they wouldn't take down, but if the Public Service Commission wished to occupy the space it could occupy it as it was, and it was not agreeable to the Public Service Commission. What space in the Equitable Building was taken to make up for this loss of 18,000 sq. ft.? A. The space on the 36th floor of the Equitable Building.

Q. One of the renting office floors? A. I couldn't say as to that.

Q. Have you been there? A. I have not.

Q. Do you understand it is a store room floor? A. I have been told so.

Q. Did you understand that some of the employees have complained against working on one of the floors — on the 36th floor? A. Yes.

Q. What branch of the service has complained against working in that room? A. Part of the engineering force.

Q. Any of the draftsmen? A. Part of them, yes.

Q. You understand some of the force under Mr. Cooperstock complained? A. I don't know what particular ones.

Q. What rate is the Public Service Commission paying in the Equitable Building? A. That I don't know.

Q. What was the lowest offer that you know of made by the Equitable Building? A. \$1.39 including the City Investing Building.

Q. Your offer was a saving of nine cents a square foot on 80,000 sq. ft. a year? A. Yes.

Q. That was a saving of \$7,200.00 a year outside of other incidental savings. Now, did the Tribune Association object to the removal of the Public Service Commission because they were going to another building, or rather, would the Tribune Association have objected to the removal of the Public Service Commission from the Tribune Building if the Commission had moved to a public building? A. No.

Q. What did the Association say on that point to the city authorities or the state authorities? A. Mr. Rogers stated to Mr. Hodge that whenever the Commission wished to remove to a building owned by the city the Tribune would be willing to have them go. They wanted to do everything to have money to the taxpayers regarding the rent paid by the Commission.

Q. Were you present when Mr. Rogers made that statement? A. I was.

Q. What was the reply? A. Made none.

Q. That was before Mr. Hodge said a lease had been signed with the Equitable Building? A. It was.

Q. What is the elevator accommodation as compared with the Equitable Building? A. Practically the same; a little less number of square feet per elevator in the Tribune than in the Equitable.

Q. But did the Tribune Building make up for that lack of square feet by express service in any way? A. The Tribune has express service to the upper floors.

Q. But the service is almost relatively the same. A. Nearly the same. It is a little less square feet per elevator in the Tribune than in the Equitable, which would be in the Tribune's favor.

Q. Did the Tribune Building make any other offer to the Public Service Commission if they remained there than an offer on a contract period of time, offer for a stated period of time? A. There was no period of time mentioned.

Q. Did the Tribune permit the Public Service Commission to occupy its quarters whenever it liked? A. Upon their removal into a building owned by the city.

Q. In other words, the Tribune Building then asked no lease, no renewal of lease, for the space occupied? A. Not for a definite period. That is, they could remove as per the clause in that letter, upon giving up ten per cent. per month.

Q. And what was the rental rate per square foot if the Commission accepted that offer? A. \$1.30.

Q. Did you see the Mayor yourself with Mr. Rogers? A. I did not.

Q. Did you see the Mayor, talk to the Mayor's secretary? A. I did not.

Q. Did Mr. Rogers? A. That I don't know.

Q. Mr. Rogers saw the Mayor in regard to this matter, didn't he? A. That I don't know.

Q. Then you understood — A. There is one point there I wish to make. When we testify the rate was \$1.30 that rate was not offered to Commissioner Hodge until he told me the lease had been signed.

Q. Then you understood then, from Commissioner Hodge, that the Equitable rate was \$1.39 and therefore you made the counter rate of \$1.35 and it was after that this Equitable lease was accepted? A. Yes.

Senator Lawson.— What was the original lease? On what price was it based? A. The first lease they took up to May, 1914, averaged about \$1.72 per square foot.

Senator Lawson.— Did that same rate prevail all through their occupancy? A. Up to May 1, 1914. It was \$1.60 —

Senator Lawson.—Then when you found competition you ran it down to \$1.35? A. Exactly.

Senator Thompson.—One of your letters indicates that you got to \$1.30.

Senator Lawson.—Do you suppose you would have reduced it to \$1.00 per square foot and it would have had a different effect? A. That I couldn't say.

Senator Lawson.—From the termination of it, in your opinion would it have made any difference? A. That is just personal opinion? I don't think it would.

Senator Lawson.—That is all I am asking you.

Q. (By Klein.) Had you been informed that there are large steam pipes running through this room on the 36th floor occupied by the draftsmen? A. I have.

Q. Can you give a reason for the removal of the Public Service Commission from the Tribune Building? A. I know of no reason.

Q. Have you read of a reason in the newspapers? A. I don't know.

Q. Do you remember reading an editorial in the Tribune referring to the removal of the Commission? A. I probably did read one; I have no recollection of it now.

Q. Much obliged to you, Mr. Mason.

(Mr. Mason leaves the stand.)

Mr. Klein.—The file of the Tribune for February was subpoenaed by the Committee and on page 8 of February 18 was an editorial, first column headed "Teaching the Tribune" which is committed to the record.

Senator Lawson.—The stenographer may copy that into the record.

Copy of that editorial is as follows:

"TEACHING THE TRIBUNE.

"Some months ago the Governor's secretary, Mr. Orr, came to this office and informed The Tribune that in view of its criticism of Mr. Whitman's official course it could not expect

to be treated as a Republican newspaper in the matter of official advertising. The specific criticism of the Governor which elicited this declaration was provoked by the Mahansic incident, and The Tribune, like all other New York newspapers, had protested against the pollution of the city water supply.

"The policy of teaching 'The Tribune' was put into immediate operation in the matter of election advertising and The Tribune was informed that as an act of discipline it was to be deprived of the designation to print the regular election notices.

"Immediately this notice was conveyed to The Tribune it sent for Mr. Samuel S. Koenig, President of the Republican County Committee, and asked if he intended to follow the orders which had been issued. Mr. Koenig frankly conceding that the pressure had been exerted, to persuade him to do this, declared that he had declined to accept such orders, that he 'did not play politics that way,' and that he purposed to designate The Tribune.

"But the campaign to 'teach the Tribune' was not abandoned. The Public Service Commission has long been a tenant of The Tribune Association, occupying considerable space in its building. The Public Service Commission's lease was to expire this year, and The Tribune early received wholly veracious information from completely informed sources that the lease would not be renewed.

"In so far as this was a matter of business, The Tribune had no right to complain, but to the extent that it was a matter of attempting to coerce a newspaper by attacking its sources of revenue and either compelling it to refrain from criticising a public officer or punishing it for making such criticism, The Tribune felt, and feels, that its readers should know about it.

"The Real Estate Board has already undertaken to investigate the terms and conditions of the new lease the Public Service Commission has signed for space in other buildings. Possibly the Thompson Committee may also find time to go into the evidence and pass on the merits of the business

question involved. For itself, The Tribune believes that some interesting details might be disclosed.

“However, the fact which The Tribune is now interested in setting forth is that it was warned in advance that if it continued to criticize Governor Whitman it would be punished. The attempt was openly made to punish it in the case of the election advertising, and it failed only because the local Republican leader declined to obey the orders that were issued to him. The threat as to the Public Service Commission’s removal from The Tribune Building was made, and Governor Whitman’s Public Service Commission has decided to go.

“If Governor Whitman — if his advisers both in official and political life — believed that they could intimidate The Tribune, they know now they were mistaken. If they imagined that by striking at its income they could punish and cripple it, they may presently discern their mistake. It is not for The Tribune to comment on the wisdom of the policy which seeks to muzzle the press in this fashion; its duty is performed when it has told the truth.”

DR. ALLEN is called as a witness and having been duly sworn, testifies as follows:

Q. (By Senator Lawson.) Dr. Allen, what is your full name?
A. William H. Allen.

Q. You are the head of the Institute of Public Service, 51 Chambers Street? A. Yes.

Q. (By Mr. Klein.) When it was announced that the Public Service Commission was to move from The Tribune Building, did you investigate the amount of available space which the Commission might occupy in the Municipal Building and other public buildings? A. We did, after asking the city officials to make such investigation.

Q. Whom did you ask? A. Our first letter went to the Comptroller and to the Chairman of the Public Service Commission.

Q. What was the response? A. The Comptroller wrote that he would have the matter thoroughly looked into and he had in mind one building that might be used to assure us there wouldn’t be any over-looking of available space.

Q. Did he mention the building? A. Hallenbeck Building.

Q. The one right across the way? A. Yes.

Q. How many stories? A. I am not sure.

Q. How much space in the building — available space? A. Our computations didn't include that because we heard that they had determined to tear it down so we made our proposal accepting the —

Q. You say the Comptroller said he would inquire into the available space of that building? A. Yes, and into the city owned buildings generally.

Q. Did you hear from the Comptroller? A. Not any further.

Q. Did you hear from the Chairman of the Public Service Commission? A. Not at that time.

Q. Well, before you heard from them again did you take the matter up with any other city officials? A. We made a tentative investigation to see how much space there was and took it up with the Mayor and the Mayor had the Commissioner of Accounts start an investigation relating to all the available space in the Court House Building.

Q. In the Court House Building? A. Yes, we proposed that a study be made accounting for each room each hour of the day and that that the Commissioner would begin an investigation.

Q. Did you include the Municipal Building in your inquiry? A. Yes.

Q. When did you first take the matter up with the Mayor? A. Informally about the end of January. Our own first formal communication was on February 16, but we had about two weeks of phoning and informal communication before that time.

Q. With the Mayor? A. With his representative rather than with him. I had one or two talks with him.

Q. Your notion was the city could find sufficient space? A. Our conclusion was after investigation — we hoped that the city would investigate before it declined. There is one point I have not heard brought out and that is the Public Service Commission applied to the Sinking Fund for space in the Municipal Building and came and looked over this Building, so that we were following hurried study by the city officers and the Public Service Commission. We didn't come to the same conclusion they came to.

Q. What was their conclusion? A. That there wasn't space and I think we showed by a very hurried study what we hoped the Board of Estimate would confirm, that there was space and space to spare.

Q. How much space in the building? A. We made two or three estimates. We showed we have three or four alternative rearrangements of this building to provide 80,000 square feet and outside of this building we found 166,000 square feet not including the Hallenbeck Building.

Q. How much space did you find? Did your report show that there were three available floors in the Municipal Building if the space was properly arranged? A. Yes. It showed nine different arrangements and rearrangements possible. Now, I want to qualify that. This was quick work and we hadn't facilities — we had a couple of men work a couple of weeks — we asked that the city have its engineers confirm the facts. We never asked anything more than that it should examine this information, because we don't claim this is final, it was too hurriedly done. We never could get them to examine it.

Q. Did the Mayor know you were making this examination? A. Yes.

Q. Did he approve it? A. I should say he was glad to have it done.

Q. And when you finished the investigation you submitted the findings to him, did you? A. First to the City Chamberlain —

Q. Mr. Bruere? A. — as representing the Sinking Fund at that time. We had a definite appointment with the City Chamberlain to be here at his office before these leases had been signed. We conferred with Commissioner Hughes who had expressed a willingness to have the Commission come into his building.

Q. Commissioner Hughes? A. Hodge, I mean. And we took this up with the Chamberlain and the two hours that we were trying to get the information before the City Chamberlain he and the Mayor spent with Commissioner Hodge in the Mayor's office talkink over why the Commission wanted to go down to the public building.

We have said if the Commissioner and the Mayor had spent ten

minutes looking at this record instead of two hours talking with no record —

Q. Did he know you had prepared a record? A. We brought it by appointment at the particular time.

Q. Did he ever seen it thereafter? A. Yes, we left it with him. We saw him after that meeting. When Mr. Rosenbluth from our office left the report with him —

Q. After the lease was signed? A. We didn't know the lease had been signed at that time. The Commission postponed for several hours — perhaps days — actually signing the lease until the city officers should do what they claimed they wanted to do, about finding space.

Q. And you were trying to find out for the city officers and for the Mayor? A. To place upon the Mayor's desk and before the city officers the possibility of a saving of that money each year.

Q. Was that made at your suggestion? A. I wouldn't say that. The situation called for it. We asked him to do it also. I don't know whether he would have done it otherwise.

Q. And you had your data prepared before the lease was signed?

A. We were writing and phoning several times a day about this because it seemed as if it was going to succeed, as if the Committee would be glad to do it and it would be \$100,000.00 a year saved to say nothing of the principle involved.

Q. Besides the space in the Municipal Building where was there other available space in city property? A. Now there are two different propositions. The possibility of the Public Service Commission going into other buildings and its proposition of readjusting within this building so that they could be altogether here and other departments going out, as President Marks said he would be glad to do. The Annex of the New York Life, this building right across the way —

Q. How much space in the Annex? A. Twenty-two thousand square feet. That is the Annex of the New York Life. Thirty thousand square feet at least in the Hall of Records. Seventy-two thousand in the Lupton Building, and of course a number of other little buildings that are being used and might be used.

Q. Is the Lupton Building a modern building? A. Supposed to be.

Q. Acquired by the city in condemnation? A. Paid for at a modern rate.

Q. How much? A. I don't remember.

Q. Did President Marks, you say, offer to give up his quarters to the Public Service Commission? A. He said after the Public Service Commission had left that if he had known these negotiations were under way he would have been glad to go over into the Lupton Building, and lease this space here.

Q. Did the Public Service Commission refuse to go to the Lupton Building? A. Yes.

Q. Did you suggest that to them? A. We suggested it. If the readjustment had been made to save that Hallenbeck Building they would have saved —

Q. You thought it advisable that the Commission stay within a close radius of the City Hall? A. Yes, we were interested in establishing the principle that the City of New York, when hard up, should not go out on Broadway and private property to lease space when it had space to burn of its own. It was not so much the question of increased deficiency as a saving of absolutely half a million dollars for five years. I think the most significant thing about it, if I may volunteer it, is that no account of urging and pleading or publicity could interest the city government in having an investigation made. We have over two million dollars worth of engineering service could have been thrown into getting this information — it got a little information about the Hall of Records this week which shows enough space that we can save \$50,000.00 a year by moving into —

Q. Was it up to the Chamberlain of the City to find that out for the administration? A. It was easily within his power.

Q. As a member of the Sinking Fund was he expected to know?
A. He was under obligations to know just that thing.

Q. He is the most active member of the Sinking Fund, isn't he?
A. I don't know.

Q. At any rate the Mayor of the City turned the matter over to the Chamberlain at the time. Wasn't Mr. Bewar acting for

the Mayor of the City? A. Only partially. I think the Chamberlain would say he was acting on his own responsibility as a member of the Sinking Fund Commission.

Q. Weren't you directed to submit your data to him? A. Yes, by the Mayor's office.

Senator Thompson.—There is more space rented now in the city than there was before they built this building we are now in, isn't there? A. Just about the same. The last time we looked it up there was a few thousand dollars less paid this year than the year we built the building. There is a matter pending now for something like \$5,750.00 for the use of a private loft for examining civil service applicants. It is used once or twice a year, no reason for the city paying \$5,750.00 for that; it is simply that there isn't anybody who knows where there is available space belonging to the city. Nobody knows about this building.

Senator Thompson.—I agree with you because we have had some experience. They told us there was available space here and gave us a nice paper with a seal on it and everything proper or with all the red tape giving us this room as available space but they were mistaken about it.

Mr. Klein.—I notice an article in the Tribune, Mr. Chairman, Feb. 18, 1916, which says: "When the Equitable Building lease was signed, they even called for an equitable payment at \$5,000.00 a year for two years as sweetening." That Hallenbeck-Hungerford Building is also on the new Courthouse site, unused. A. Unused! They expect to tear it down, according to the Comptroller.

Q. (By Klein.) How many square feet in that building? A. I haven't it. I think about one hundred thousand square feet.

Mr. Moss.—I suppose a good deal of space in the Equitable Building is not taken. A. Oh, I don't know.

Mr. Moss.—Perhaps the making of this lease helped the Equitable Building to that extent to fill up. Have you looked into that side of it? A. No, because that is not the side we would naturally

look into anyway. We are not interested in motives. We were interested in trying to get the city officers to deal in a business like way with this building and in the Hall of Records.

Mr. Klein.—You consider the city acted in an improvident manner in this matter? A. Absolutely.

Q. (By Klein.) Do those records show anything more of importance. A. No, except we tried to interest—we suggested how much could be done. We were told as a bit of gossip, by some city people, employees who were accompanying the Public Service Commission that Chairman Strauss said if it were a private concern he saw enough space around here; that there is no reason for sending them away into private buildings.

Q. That was before the lease was signed?

Senator Thompson.—I will tell you how to clear that. To go back to the old railroad commission and do as they did or do as the state did then—assess the cost of the railroad commission on the railroads instead of on the taxpayers—you wouldn't be bothered with this sort of thing then. A. Except you have already shown, Mr. Chairman, that the taxpayers pay that bill that goes up to the railroad.

Senator Thompson.—In the old days when we had railroad commission, the cost of the commission, the cost of the administration, the salaries of its officials, were assessed on the railroad. They paid it; the taxpayers didn't pay it. When we established the Public Service Commission we not only took that away but we forbade the officers from riding on the railroads and made them pay their fare. A. It hasn't come up. I think a relevant question here from the standpoint of the city taxes, is the way in which they got their money this year. With all our talk of efficiency and the segregating question, our request for a Public Service Commission budget totals considerably over a million dollars. As we stated in a statement about that time to the Mayor, when we wanted to save twelve million dollars by action at Albany, there is not a thing that the Public Service Commission can do. The Commissioner of Accounts gave considerable of his service to studying small bureaus that spend twenty to forty thousand dol-

lars a year and then vote it away without ever analyzing or investigating in any way — a million dollars now, a million dollars tomorrow — without ever using the Commissioner of Accounts or the Standardizing Committee or the Bureau of Contract Supervision, to get just a few of the fundamentals of the efficiency of the Public Service Commission.

I should like very much to see your Commission suggest to the local Legislature that before they appropriate another three million dollars to the Public Service Commission, it do with respect to that Commission's proposals what it does with respect to everything else. There never has been a time in years when we couldn't have saved many times the cost of your Commission and many other investigating commissions, simply by a two days' investigation of the Public Service Commission.

Senator Thompson.— Whenever we make any suggestion to them lately, they tell us we are dead. But we are going to make a few suggestions after a bit. A. There is a constructive thing that I think would be a good deal of help. We have the mechanism for learning a great deal.

Senator Lawson.— If the city authorities think that the Public Service Commission is asking too much money and want to reduce it, they have recourse to the appeal of the Appellate Division, haven't they?

Mr. Moss.— When you consider the way the debt limit was frittered away to make it impossible for the city to build subways; when you see how the figures of \$500,000, \$1,000,000, \$2,000,000, \$3,000,000 thrown around loosely as you might throw a fifty-cent piece or silver dollar, perhaps; it's got me dizzy.

Senator Thompson.— The reason they do these things is because there is precedent for it. That is my assumption because they don't pay any attention when we call attention to it and they don't. I assume they think because there is so much precedent for it that governs the situation. In other words if they have done something that is not defensible they think they have had at one time a sort of — well, that the public —

Mr. Moss.— What I mean to say is that the city is too poor to

build subways because its debt margin has been frittered away; it ought to be too poor to permit these reckless expenditures of vast sums of money. I was talking with one of the engineers — this is offhand but it serves to illustrate — I was talking to one of the engineers about how these things are treated in a certain public office and he said it was foreverlastingly compromising, somebody wanted so much, somebody said it is worth so much, "Let's compromise." Instead of settling down to investigation, it is compromised and thousands and thousands of dollars are thrown away on compromises. It seems to me that is the way the debt limit was enlarged and the debt margin cut out to permit the insiders to work this dual subway contract. A. You take this hundred thousand we are now talking about. At the time when they didn't have ten minutes to stop and look at evidence at where there is ten million dollars worth of space available — at that very time they were having a great commotion with the Board of Education — cutting down the recreation centers and the popular lectures. There are one hundred thirty thousand people in classes of over fifty in a class — cutting out health work and cutting out school work and throwing away a half million dollars a year because the men who are sitting at headquarters wont sit down and spend ten minutes looking.

I pleaded with the Mayor, said, "Come over here just to walk through this building." Tried to get Senator Brown's Committee to spend twenty minutes walking in this building just to see —

Senator Thompson.— Senator Brown's Committee has an office here? A. It is not merely the space that is not used at all; it is space used 5 per cent. or 10 per cent. of the time, just for want as they said (the Mayor and the Comptroller stated this even more unqualifiedly at a Board meeting) because nobody had stopped to think about it. We were within a year of an election. If this Committee reports to the taxpayers of New York before the next budget (we have two more budgets to make up), I believe there is a way of convincing the public that the load is squarely on the Board of Estimate and it can't shift the responsibility.

Mr. Klein.— I notice in your file —

Senator Thompson.—Right there! We have six months to draw a report. After we get a skeleton of it made we will have some informal hearings on that point. I wonder if we can call on you? A. Certainly.

Mr. Klein.—I notice in your file, doctor, that you have a letter dated February 11 to Hon. Leonard Wallstein, Commissioner of Accounts, in regard to space in the Municipal Building. Has Commissioner Wallstein undertaken an investigation to find out where the city has available space? A. He has, and he has made a very important report with respect to the Hall of Records which I hope to get in your record. He tried to get power from the sinking fund to investigate all of the municipally owned real estate properties but the Real Estate Bureau of the Comptroller's office protested and after the Commissioner of Accounts had been given a general commission he was finally limited to the Hall of Records and the Municipal Building.

Q. When did he ask for this power? Before what body? A. Before the Sinking Fund Commission on May 4th, and he was given general powers and then on May 18th they took away from him the power outside of these two buildings and then last week, the 22d, he made a report on the first part of his investigation. That shows what will happen when they investigate the rest of the property.

Q. Did it show sufficient space for the Public Service Commission in this building? A. His detailed work has been in the Hall of Records. He showed how in the Hall of Records there are three floors, about two-thirds as much as they need for the Public Service Commission. The Public Service Commission is not all together in this compact way. That was the reason for going out and not taking rooms there; they wanted to have it all together.

Mr. Moss.—How is that? Show us what you mean. A. As I understand, there are some part of them on the 36th floor, some on the 12th, 24th, 25th and 36th floors.

Q. (By Klein) Before they moved they had offices on 51 Chambers Street and in the Woolworth Building? A. I don't know.

Q. The engineering force in the Woolworth Building and part

of the storeroom in Chambers Street? A. It was possible to rearrange space in this building so as they could have been together, because we have the Hall of Records over here and we could easily have gone to the New York Life. They didn't want to have anything to do with the Tribune Building and when they once got started they didn't want to have anything to do with this building. Technically they were protected because they had asked the Sinking Fund and hadn't gotten space.

Q. I notice in your file a letter from Chairman Strauss, dated February 15, 1916. A. This was written after we had urged them to wait 24 hours and give the city officers a chance to get the information about this building, and our letter had urged what the money would buy if spent on health and school, and so forth.

Q. The Mayor requested such a delay? A. Yes, and it is fair to the Public Service Commission to recall that they didn't actually sign the lease until the Mayor phoned it would be all right.

"Q. I am in receipt of your two communications of this day regarding new quarters for this Commission. I enclose you herewith, for your information, a copy of letter of to-day, addressed to the Mayor upon the same subject, which explains itself.

"Your statement that the taxpayers will be taxed when they need not be by our taking new quarters, is entirely unwarranted. In the first place, the rental of the new quarters is less than the present quarters and secondly, we will gain in efficiency in the new quarters considerably, in addition. I can only attribute your statement to the fact that you have been either inadequately informed, or misinformed. It is an error to suppose that because the City owns property which it has bought for other purposes and has no use for it, that therefore by occupying such property, if that were practicable, there would be a saving. It seems to me if the City owns property which it has no use for, it can dispose of it and save the loss of rental. I am just as desirous personally and as Chairman of this Commission as any one can be to promote economic administration and thus save money which the city could use for such other purposes as you indicate. But there is such a thing as being a penny wise and a pound

foolish. It is the duty of this Commission in the large administration it has, to promote efficiency, and doubly so when such efficiency as in this case will insure economy.

"I am convinced the Commission has done wisely in securing new quarters infinitely better adapted than the ones we now occupy, and at a less rental.

"Very truly yours,

"(Signed) OSCAR S. STRAUSS,

"Enclosure.

Chairman."

Senator Thompson.—I wonder why it is that when we save money for the city they couple it with the suggestion that that money be used for other purposes. It would be wrong to save money for the city or the state or just save the money.

Mr. Klein.—Do you know why the Mayor gave his consent to their leasing the Equitable Building? A. The Mayor never gave time enough to picture any of this extravagant space. He was acting on the advice of those who were supposed to have given time to it. He had no report from the Commissioner of Accounts and he had no report from anybody else. The dramatic helplessness of the city is that millions of dollars are spent for investigation—

Q. (By Mr. Klein.) Real Estate men objected to the city leasing this building. A. Very strongly.

Senator Lawson.—Whose fault is that? We have been down here for over a year investigating all kinds of incompetency and other matters pertaining to public service and public utility. Some of us live here. Taxpayers are complaining; everybody is complaining. The very minute you start out to analyze responsibility you run up against a stone wall. Whose fault is it? A. The legal responsibility here runs very directly to the principal officers of the Board of Estimate, if they had the chance. The moral responsibility is one that I think ought to be pointed out to the town. There never has been a time since I have been here (thirteen years), when this town was as helpless in securing a frank analysis of facts by the city government as it is to-day. There are certain forces that practically prevent a frank discussion of things under the present administration and they would be discussed under a non-reformed administration. I have just submitted a protest to the National Municipal League under the heading, "Tub-

rose Obsequies to Reform." This town is drugged with eulogies and bouquets and people who would use language that would burn newspapers either say Hush or Hooray; any attempt to analyze what is going on in this difficult —

Mr. Moss.—If you don't give a certain amount of incense to this high browed administration you are an atom. A. You are. We are about to put out — day after to-morrow — a list of the high spots in the public schools of New York. There is now a great deal of damning of the schools. I felt it a great pity to have twenty or thirty thousand guests come to this city and find a general condemnation. I am under indictment among the best people of this city for playing a political conniving game and it has been publicly charged by the Secretary of the Public Education Association that we are in some kind of a political deal because we are telling certain excellencies about the schools of New York in an impersonal way so that twenty thousand guests can read some of the forward things we have done. That thing about New York City is a tremendously serious thing. I believe there is a way of showing how this whole thing is pyramided up to some of these great big propositions, the New York Central proposition on the west side and some of your propositions here, so that the ordinary mentors of public discussion, or leaders of public discussion, are facing the other way and say "Hush!" Now, we have got to tell the truth about it. I happened to be among those who believe in municipal reform. I want it. I want it to keep on. I think it is being jeopardized by this tuberoso business, incense burning.

Mr. Moss.—You said something about that New York Central business. You are speaking of pyramiding on the New York Central. A. You read in the morning papers two of our leading organizations in this city, representing important public opinion are out in columns of the newspapers that regarding the price and the real estate features of that proposition there is nothing to be said. We have been having an analysis made largely due to President Marks' introduction and he called our attention to certain things he would like to see done, and we, in cooperation with the real estate brokers and the West End Association, had been having some detailed studies made of the real estate values

and the real estate ownership in the pieces involved in the west side. But this is the point, that the Committee hasn't studied these things, and here is invaluable information involving millions of dollars to the city and there is something about the temper of the public mind that says the decent man shall not get the truth about it.

If you have the right attitude toward public spirit to-day, you are to accept that without question. I believe this detailed study will show a percentage, if anything, in getting information that will be absolutely astounding. We hope to have by Friday as much as we can get, enough different information of that kind to warrant, if not to compel, the Board of Estimate that its own highly paid officers get this information.

Mr. Moss.—They say there are some powerful influences at work to put that New York Central scheme over? A. It would be surprising if there weren't some.

Mr. Klein.—The Mayor is for that scheme, isn't he? A. He said so. You ask what can be done about it. I think the thing that the public must come to see in this town, is that there is absolutely no salvation for a public that is not informed. Now here is a picture published in a certain paper in New York. It represents the New York Central line carried over to the river; it misrepresents the fact. Who drew that picture? It was issued from the Committee on Terminal Improvement. Who drew a lying picture that appeared in one of the most influential papers of this city? I'd like to see a Committee like this ask for the working papers. Who initiated that lie and put it out?

Mr. Moss.—Tell us what the lie was. A. Here is the picture. The original report reads that the New York Central is to pay \$300,000.00 for restoring Central Park. The thing in the newspaper as given out by — I should have said Riverside Drive — the statement in the newspaper, official statement given out by our own Committee, reads: "The New York Central promises to pay enough" (not \$300,000.00) "to repark the front over the river's edge (not to restore the park), whereas there is a gap there for which they don't promise to spend a cent." Who drew the picture? Who in the Board of Estimate Committee knew

that picture was a lie before it went out? There have been mayors representing other factors or parties in this community, who, if they had done that identical thing would have been fairly rioted out of this city. They could have been held up to scorn and contumely by every decent paper in this city. What is this thing in our public to-day? It keeps us from saying a single word.

Mr. Moss.— Because we hate to believe all of those who advertise that they are good. A. I don't think it is as simple as that.

Mr. Moss.— That is the beginning of it.

Mr. Klein.— Who is the engineer of the Terminal Committee of the Board of Estimate? A. The only one I know active in that Committee was Commissioner Goodrich.

Q. (By Klein) Well, the Port and Terminal Committee is under the jurisdiction of the Dock Committee? A. He is the major wheel in this Committee. The plans had been drawn on the hospitality of the New York Central.

Senator Lawson.— You think they have a bill for prior determinations when they get through? A. I am agreed they will, unless you get it.

Senator Lawson.— All the railroad companies are charitable except in forming an organization for engineers, buy all the necessary details like carbon paper and drinking cups and all these little things, and they do that for two or three years and spend anywhere near half a million to a million and a half dollars. After helping the city very initially to obtain a franchise and to go ahead and build a road to make money on they send this bill in to the Chief Engineer of the Public Service Commission, and the Chief Engineer of the Public Service Commission, by that particular subtle influence which you have been talking about, some kind of influence that this Committee has not reached a tangible idea of yet, approves this bill and the tax payers pay these charitable public utilities for this work.

Mr. Klein.— This west side improvement project has been pending for a number of years and it was first brought concretely

to a head in the Board of Estimate when a report was brought by Alderman Mitchel about the same time he made a report upon the South Brooklyn Terminal project. A. I don't know the dates.

Q. (By Klein.) The Mayor at that time was the President of the Port & Terminal Committee of the Board of Estimate. That report has never been adopted has it, by the Board of Estimate? A. You mean the original report?

Q. And this settlement that is pending now is a modification of that program outlined in that report? A. Yes.

Q. Do you believe that any report will be adopted by the Board of Estimate that does not permit or allow a monopoly of the west side for the New York Central Railroad? A. I certainly hope that another report will be.

Q. Did you consider that this report as it stands today, provides for a terminal monopoly along the west side? A. I think so.

Q. Did former Dock Commissioner Tomkins have that same idea? A. Yes.

Q. And Mayor Mitchel is for this report that is now pending before the Board of Estimate? A. Yes.

We got a tip at our office over the 'phone that on a certain Tuesday at 11 o'clock at the hour when the Board of Estimate would be in session that the U. S. War Department would hear a petition from the New York Terminal Committee to bring in our bulkhead line, which amounts to giving up 12 and a half acres of our land. It came to us as a tip from the war office in Washington, around through certain towns in New York. I took it up first. There wouldn't anybody in New York have known that thing was going to happen, absolutely nobody was taking any steps about that. We made some inquiries and finally did some 'phoning to people interested in parks and in schools and in getting more space, and the Park Commissioner, and finally the Park Commissioner appeared at this office regarding giving up this land. The representative of the Borough President of Manhattan was very strongly opposed. A very interesting thing happened.

The Dock Commissioner publicly rebuked the Park Commissioner for appearing in opposition to this plan if actually taking the initiative in giving away this 12 and a half acres of the water

front and said that as a Park Commissioner he had no business to come there and oppose that thing; although the Dock Commissioner had a perfect right to come there to give the land away. That is the type of thing that this town ordinarily would be ignorant about.

Mr. Moss.—Have you heard that the Mayor wants this thing put over before the 28th? A. Yes. The thing that I feel —

Mr. Moss.—To put this thing over before the 28th? A. That would partially explain this publicity at the present time.

Mr. Moss.—Have you learned that any connection between any member of the Board of Estimate and the Board of Directors of the New York Central exists? A. I have great faith in the thing that I can put on the table so that we all agree it is the same thing and it is that kind of a thing we are interested in.

Mr. Moss.—If there was a peculiar friendship, perhaps we could find that out.

Senator Thompson.—If the city administration were looking out for the people of the city this thing couldn't happen.

Mr. Moss.—It is perfectly wonderful to me how this city, hard pressed as it is, has always been able to put certain things through — East River Park, Rockaway Park, Dreamland Park, civic centers, courthouse sites — Poor city! So poor that it is in a most distressful condition with regard to subway contracts and yet can always find money to do those things. A. Providing your Committee studies for an analysis of the so-called "city leadership." A tremendously interesting this has happened in in the last three or four months with regard to the private agencies interested in public affairs. We were all of us outsiders a fey wears ago, working hard to get good government. How many of the city agencies dare peep today about anything? Case after case where they start into oppose something, they find out one or two city officers want it and it all is straightened out.

Mr. Moss.—Have you ever heard of the City Charity Trust? A. I have heard of it.

Mr. Moss.— A hard thing to run up against. A. I have had that experience myself, but some of the things can be rather clearly shown and I think that the part — I include myself, I throw myself into the hopper — the town ought to protect itself against anybody that is trying to tell it what the facts are; but I believe that if this Committee would take the agencies that advertise themselves as speaking for public sentiment, actually get their line up on some of the matters that you are taking up and finding out how easily a lot of us are delivered — how automatically five, ten, twenty, agencies in this city can be gotten over the phone —

Mr. Moss.— Do you think in these civic and charitable agencies you can find interlocking directorates?

Senator Thompson.— A member of one of the clubs in this town that attempted to assist this committee — they fired him out of the club.

Mr. Moss.— Another man that has been helping the Committee, and a society of old ladies threw him out. A. (By Witness.) I believe that that is a more fundamental thing, more fundamental to the cause you are investigating than any contract we have in the city and there is a way of getting information that is not debatable.

Mr. Moss.— This city has a press agent of its own. A. Under another title, however.

Q. (By Moss.) He is employed by the Commissioner of Accounts, isn't he? His name is Lewis Brands, salary \$3,000 a year. A. I thought it was more.

Q. Wasn't Mr. Bewar one of the most efficient press agents the city had at \$12,000 a year?

Mr. Klein.— I have been told Mr. Bewar was the most efficient—

Senator Lawson.— You have proven a very interesting witness and we are very much obliged to you. I just want to say this in conclusion to see whether you agree with it or not. The city has arrived at that point where it is largely governed and influenced in its municipal offices by private clubs, similar to the

City Club, the Citizens' Union, and other organizations of that kind. Now, it is my understanding that those organizations are supported by voluntary contributions and very wealthy men who think that they are doing a public duty contribute. Just in what manner the Legislature might take cognizance of that and eliminatet that influence is a question that has to be seriously considered.

I know that we have men in the city government today that were employees' secretaries at different situations of these very clubs. We had this man recently promoted to be a Public Service Commissioner, Whitney, who was the secretary of the Citizens Union; he was their legislative correspondent at Albany. It is my understanding that unless members of the Legislature would do what the Citizens' Union wanted that Whitney at that time would fairly blackmail them in this paper, this pamphlet that he published, through the Union. We have McAneny, a very high type of city official, who graduated from the City Club after being the press agent of the Pennsylvania Railroad.

We have another man by the name of Hammet who was Chief of the Fire Commission, and I could go all down the line so that the influences that are so strong are all comprised of various clubs of this kind. Now, that is a serious situation for this city. It is very serious. Just how we can control that matter, how we can legislate to better it, to permit city officials to be thoroughly independent, take them outside of the pale of their influence, is something that this city will wake up to very shortly and which the Legislature must take cognizance of.

Mr. Moss.—I used to hear the term “professional reformer” and I laughed at the idea but I have begun to understand it.

Witness.—There is one practical thing that I believe you could do. We paplied to the Legislature last year for a charter and put in two or three things that I hope will go through. One is that there shall be an audit of the incorporation of these state chartered organizations; second, that the records shall be public records to a degree that few people, even if its support is religious — agencies like ours work without records and work by telephone,

where one man delivers a vote of one, two or five people. We can catch that. The Legislature can catch that by requiring that a man — that every time an organization goes on record on these public matters that its record shall state who met, how many people wanted this thing done, that there shall be an actual record. The audit of our finances does not mean a thing. The audit of our claims means a whole lot and if the Legislature claims what we pretend to be, what we say we have done in a community — It's easy to cover our finance but it is not easy to cover our work. You take the large foundations.

The city here — there has been here in but two years when three or four great national foundations actually went around town peddling a petition against a President of a Board of Education who had been unanimously elected. I believe if the Legislature would say, "These public and chartered agencies are public, they shall have an audit of their finances and an outside office of their own —"

Senator Lawson.— I agree with that from my own knowledge but I want to say this, Dr. The very moment you introduce a bill of that kind you have little Bobby Binkett and all these other reformers buttonholing every member of the Legislature and you'd be scandalized. The papers believe that anything that emanates from anything like the City Club there must be something in it so that it's got to be a unanimous movement on the part of the Legislature to bring about such reform as that.

Mr. Moss.— You have a movement for an election originate in a club; a committee constitutes itself, sends out and gathers up whom it likes and creates apparently a committee of citizens which is after all a self-chosen committee and represents the idea in control of a certain club.

Witness.— There is no cure for that but information.

Dr. Allen leaves the stand which is taken by Mr. Abel.

Mr. Schuster.— Mr. Abel, at the time of making the contract No. 4, the New York Consolidated Railroad had constructed and

was operating the third additional track on some parts of its elevated system. Is that not true? A. Well, I think they probably had some sidings in there, short stretches.

Q. I notice in looking over the certificate of the Broadway, Fulton Street and Myrtle Avenue additional track that there is a recital — it says “Whereas, third or additional tracks or structures to accommodate such tracks have been in part constructed, a portion of such tracks or structures are described as follows: “It describes the Broadway line and the Fulton Street line and then in Article IV of the certificate it reads, “The third or additional tracks hereinbefore described” referring to that recital — A. I think it was in reality what we call the sidings.

Q. This says, “which have already been constructed shall not be subject to the provisions of this certificate and shall not be deemed part of the plant installed thereunder and shall not be subject to be taken over by the city under Article II hereof unless it shall finally be determined in the words that such additional tracks shall be constructed and are now maintained, in which event without authority of law, they shall be subject to the provisions of this certificate and shall be deemed part of the plant and property installed thereunder and in case of termination of any authority herein granted, may be purchased and taken over by the city under Article XI.”

Article XI. referred to in that provision is the article which fixes the schedule of costs to the city upon recapture after ten years. A. In other words, the city had the right of recapture under the provisions of the certificates, licenses, without prejudice to the rights of the company as to the existing railroads.

Q. But if as a matter of legal rights it had third or additional tracks they wouldn't be recaptured.

Senator Lawson.— That would hardly be feasible because where there have been stretches of third track for the purpose of storing cars, they now erect a third track along the entire structure they have got to go over that track, so that there would be just spots along there — it wouldn't be feasible. A. That was all taken care of in the contract.

Mr. Schuster.— They —

Senator Lawson.— That has been a mooted question, as to what the city actually recaptures.

Mr. Schuster.— There is nothing definite. The contract is very —

The only event in which the city would take those existing third or additional tracks would be that they were found to be illegally constructed. In that event of course, after the courts hold that they are illegally constructed, they could be taken over. In any event the city wouldn't operate them. Now, the reconstruction of the existing railroads would include any reconstruction that those third or additional tracks, would they not? A. Yes.

Q. I find in the determinations under contract No. 4 there are items charged or credited both to the city and to the company for reconstruction items. You are aware of that, are you? A. I don't understand what you refer to.

Q. Let us take the prior determinations. We find that the city's expense and superintendence under that item on page 7, the article of reconstruction under existing railroads against which there is aggregated \$5,280.78 of expense borne by the city — A. You mean borne by the city or expended by the city?

Q. Expended by the city. There is this foot note to that item: "This item is not specifically covered by the figures above quoted, which is simply the extract from the record." What I wanted to get at is on what theory the city was entitled to aggregate any of its charges. A. We don't concede that it is.

Q. This determination has become final by reason of the fact that there is no appeal. A. We filed a protest at the time the prior determination was submitted and took exception to a lot of the city expenditures.

Q. I find that that same thing is true with regard to interest. A small item on page 10 under interest, is credited to the city's share of contribution for reconstruction of existing railroads of \$175.55. What interest has the city in reconstruction of existing railroads?

Mr. Yeomans.—When they went in I think the city was considered to have contributed about \$500,000.00 too much.

Mr. Schuster.—Oh, no. A. (By witness.) The Public Service Commission and the Chief Engineer tentatively agreed to \$500,000.00 being stricken out and two million and a quarter charged by the city, and the Chief Engineer reserved the right to redetermine that prior determination for two or three periods, and then subsequently dropped his right to redetermine and that automatically became final.

Senator Lawson.—Mr. Yeomans, did you mean to convey the fact that the city had loaded up their prior determinations?

Mr. Yeomans.—I don't mean to say that they had loaded it or plugged it but they were at one time — the city engineer came to the conclusion that there were \$500,000.00 too much. A. (By Witness.) As soon as the contract was signed it went back through the records and every dollar that they could dig up they thought could be related in any manner to this undertaking they charged to this point, and we protested against it because they didn't give what we considered proper allowance for the divergent use of the Fourth Avenue subway. They charged the carrying charges of the Fourth Avenue subway against the cost of this venture in which we would have to pay interest, and yet because of a lack of sewage facilities they diverted one of the tunnels.

Senator Lawson.—In other words, they attempted to do just what the railroads accused.

Mr. Schuster.—How would the passing of the City's Contribution Act affect the railroad? A. (By Witness.) It minimizes the divisible surplus in which we participate.

Q. (By Schuster.) But the city also shares in that. A. The city shares in the divisible surplus but if the city gets 100 per cent. of something it is not entitled to, it can well afford to take a less division of something it only shares to the extent of 50 per cent. We want what is coming to us under the contract and we don't want anything else, and we don't expect the city is going to charge anything more.

Mr. Yeomans.— You have to concede the principle that you have placed — that the city has charged up to us any cost of supervision of reconstruction.

Mr. Schuster.— Whatever deficit is required over and above your contribution the city must provide.

Mr. Abel.— No, sir.

Q. (By Schuster.) Who provides it? A. (By Witness.) If there is a deficit in the first five or ten years —

Q. No, I am not talking about that. You have got a definite maximum contribution. A. What you mean is if the city is called upon to spend a larger sum than was estimated at the outset, it is up to the city to do that.

Q. That is true, but in no event can the city call upon the New York Municipal Corporation for any greater sums than the cost of construction and equipment as specified in the contract, to wit: Thirteen million to construct and twenty-two million for equipment. A. Well, if we should need a couple hundred additional for cars, the city wouldn't furnish it. If the city insists the tunnel construction should be greater it is up to the city to defray the expenses; but if our estimate in the purchase of rolling stock, etc., should fall short of our expectations we should furnish the balance or we would go without the equipment.

Mr. Schuster.— Isn't it a foregone conclusion that the city's cost of the tunnels will be in excess of the city's estimate? A. I don't know.

Q. I notice now in the first determination — quarterly determination ending January 31, 1914 — I find "Expenditures by Lessee covering period from March 19, 1913, to June 30, 1913, inclusive, reconstruction of existing railroads" specifying an item for Brighton Beach Line, Seabeach Line, Fourth Avenue and Broadway connection, Myrtle Avenue line, Coney Island Terminal, etc., aggregating \$596,000.00. A. I think that is prepaid interest that's been distributed over the different lines.

Q. You think that is prepaid interest? This covers everything? A. I am talking about the major profit.

Q. Well, on the Myrtle Avenue and Broadway line, which seems

to be the largest single item, the labor and material is \$217,216.00. Was that an existing railroad? A. Broadway is an existing railroad and the Myrtle Avenue line used to cross Broadway at a different grade. This is to pay an at-grade connection.

Q. Now the properties created by this expenditure here determined and allowed — would any part of that be recapturable by the city under the certificate or the contract? A. Subject to the railroad rights, yes.

Q. But they are not of the existing railroads — they are recapture or expenditure. A. The third-tracking of the existing railroads is subject to the recapturing provisions.

Q. But that comes under the title "additional tracks" which is segregated and a separate allotment. A. This Broadway-Myrtle Avenue connection leads into a line which is a construction of an elevated line where a surface line was heretofore constructed.

Senator Lawson.— That goes through private property. There was no existing surface line going through there. A. Excepting the junction.

Mr. Schuster.— Look at this Exhibit. Your additional tracks and your elevated extensions are all separate segregations. Now, the reconstruction of existing railroads, as I understand it, are not recapturable except they were found to be those any parts of which were constructed without regard to law.

I will offer the first quarterly determination, of January 10, 1914, and reconstruction of existing railroads of the same date, in evidence and asked to have it marked. I want to make a separate exhibit of pages three and four in Roman numerals. Now in the second quarterly determination, page three in Roman numerals, we find allocated to reconstruction of existing railroads for labor, materials, real estate, debt discount, expenses, superintendence, etc., total of \$525,787.34. That would appear to be the same character of expenditure and to have received like treatment, as in the first quarterly determination. A. Yes, sir.

Q. I offer that page in evidence which is the second quarterly determination, of July 14, 1914. A. May I see that?

Q. There seems to be another sheet on page four. There is an additional total of allowances to reconstruction of existing rail-

roads for \$34,272.73. That seems to be exclusively debt discount expense, superintendence and interest. That is for the period ending September 30, 1913. I will offer that page also, in evidence.

In the third quarterly determination, August 30, 1914, on page three (III), Roman numerals and page four (IV) are items allowed to the lessee for its expenditures chargeable to construction of existing railroads aggregating in the first instance \$508,695.20 and on page five, \$44,131.78.

In the fourth quarterly determination, November 13, 1914, on page three appears to have been allowed to the lessee for its expenditures to reconstruction of existing railroads an aggregate total of \$696,064.70 and on page four a similar allowance to reconstruction of existing railroads \$47,165.61. I will offer those in evidence and offer the fifth quarterly determination—I will offer the whole thing in evidence.

In the fifth quarterly determination, February 2, 1915, the Commission or the Engineer, begins to demonstrate the total expenditures from the beginning to the period covered by the determination and follows it with like memoranda as to total costs in the sixth quarterly determination of March 25, 1915, which is the last determination, I believe, that the New York Municipal has obtained. A. We have received the eighth.

Q. You have received the eight? The sixth would seem to bring down the period to September 30, 1914. That seems to be the last that we have in our records. Do you recollect the date of the eighth? What fiscal period is its ending? A. Covers the period from January 31, 1915, to March 31, 1915.

Q. I will offer in evidence the first six quarterly determinations, and will you furnish us with the seventh and eighth quarterlies?

Mr. Crummey.—If we have them.

Mr. Schuster.—You must have them if the Company has them. I will offer in evidence the seventh and eighth at this point so as to keep our records all together.

I find on page 2 of the sixth quarterly determination under the heading of "Total expenditure" memorandum of total expenditures, first comes the railroad costs, which is the subways, the city railroads, then the reconstruction of existing railroads from prior to March 19, 1913, to September 30, 1914. The total cost of reconstruction of existing railroads as allowed as expenditures by the city is four million four hundred forty thousand, two dollars and ninety-two cents.

I will ask the same question with regard to all these items which have been specified. None of the properties created by those expenditures are recapturable under the terms of the contract? Not subject to recapture? A. Not subject to recapture.

Q. And these determination costs have all been allowed and passed without any appeal or objection on the part of the city or yourselves, is that the fact? A. There have been, I think. Those are final. The time within which the exceptions to be taken, I think, has expired. That wouldn't be true as to the eighth one.

Q. But the city has made no objection to any of these six that are now in evidence and the time to appeal or object has expired. Now, is it in the prior determination that I understood you to say that the city has agreed to reduce its charges of interest by \$500,000.00? A. I didn't say the city had agreed. I said the Public Service Commission and the Chief Engineer in the presence of the Public Service Commission had an informal discussion, conceded that there was an excessive charge in the item of about two million and a quarter and I think the question was put to Col. Williams whether a reduction of \$500,000.00 instead of about a million that they asked, be taken off—if that would remove his entire criticism but it was intimated that in a subsequent determination an adjustment could be made. It was not an absolute agreement but that is the impression that was left in my mind, that the over charge would be recognized and there would be a scaling down because of these things we wanted out, the Fourth Avenue diversion and another item. The city had put a lot of pipe galleries in the construction of the subway ;to admit of the pipe galleries in the construction of the subway; to admit of the to the cost unduly. Then there was all this excessive interest on account of the Center Street Loop. The contract provides for the

city as it does for us, that only the actual and necessary expenses can be included by the cost and we maintain it is not a necessary expense if they prolong the agony for eight or ten years and build a line that could be built in three.

Q. I understand then, that that matter is held in abeyance and you are relying — A. It was held in abeyance and we expected to have a readjustment and there was an adjustment. If you will scrutinize these very carefully you will find this is subject to reconsideration by the Chief Engineer and in an unguarded moment he let it go past with this little rider omitted.

Q. You consider stipulations printed in these determinations a protection to you, or does that only cover the items that were not possible allocations? A. We don't want to be squabbling with the city on their expenditures right along. We checked up this first determination to see what the city was really doing. They have never checked the city up on any other determination than the first. We took our medicine; we did informally protest against the reconstruction of existing railroads of any part of the city's charges for superintendence and we also objected to their including some of the regular charges of the Commission which we maintain have nothing whatever to do with the subway contracts and which will endure long after the subway construction has ceased.

Q. If you are not making any check on the city's expenditures and allowances, are you relying on the Public Service Commission experts to protect you by their method of checking? A. Well, we are relying on the Chief Engineer for the determinations and we had supposed that when we pointed out these seeming injustices in the first determination we would get a redetermination, but so far we haven't done so.

Q. Is that because you don't consider it of enough importance to go to the expense that would be incidental to such a checking process? A. Well, I don't know.

Q. Or isn't it of enough vital importance to your interest to be particularly careful what the city is including in its construction of items? A. I think we have given you a lot of literature on the subject that has been put out from time to time criticizing the city's expenditures.

Mr. Moss.— In connection with the statement I made the other day that one of the faults of the dual subway contract is that it fastens a five-cent fare upon the city for 49 years, I call the attention of the Committee to the printed report of the Public Service Commission for 1913, Volume II. In this volume the statistic departments of the Public Service Commission has given us the compilation of a study of the reports of the surface railroads in New York City in which it declares at page 383 that the total operating expenses on the subway railroads are only 2.03 cents per passenger; on the elevated railroads 2.16 cents per passenger, making an average of 2.09 cents per passenger on the entire system of subways and elevated railroads, and leaving an average profit of 2.91 cents per passenger.

At pages 376 and 377 it is shown that the operating expenses are only 9.93 cents per car mile, while the revenue is 23.76 cents per car mile.

On page 93 it appears that the average ride on the subway system is 5.84 mile per passenger. From this it will be seen that it costs the Interborough 2.09 cents per passenger to carry passengers an average of 5.84 miles which is at the rate of 34 cents per mile per passenger, which indicates the great profit of the short-haul business. It has been suggested that upon these figures it costs the Interborough to carry passengers from the Grand Central subway station to the Brooklyn Bridge, a distance of approximately three miles, almost exactly one cent each, leaving four cents as a clear profit over and above all operating expenses.

I introduce in evidence a letter of the Public Service Commission dated June 7, 1916, and the list referred to in said letter:

“ June 7, 1916.

“ Frank Moss, Esq., Counsel, Joint Legislative Committee to Investigate Public Service Commission, Woolworth Building, New York City.

“ Dear Mr. Moss: In compliance with your request I take pleasure in transmitting herewith a list of all real estate and easements therein acquired by the Commission for rapid transit purposes under Contracts Nos. 3 and 4. This list in-

cludes interest payments as well as the original cost, but does not include the cost of proceedings, appraisals, etc.

"I trust that this will answer your purpose and I regret the delay in preparing it, which I have previously explained.

"In accordance with your request of our Mr. Crummey, I am sending you under separate cover two copies of the May issue of the Public Service Record.

"Very truly yours,

"(Signed) JAMES B. WALKER,

"Secretary."

JBW/JJT

encl.

The list mentioned in this letter is as follows:

CONTRACT NUMBER 3.

White Plains Road Connection — Borough of The Bronx.

Description of Property.	Fee.	Cost.		Interest.	Total.
		Easements.	Other awards.		
Block 4003,					
Block 4005,					
Parcel 1	\$51,168.60		Appealed	\$5,600.00	\$45,600.00
Lot 156	7,475.00			1,021.57	8,496.57
Lot 157	5,350.00			734.73	6,084.73
Lot 158	5,100.00			700.40	5,800.40
Lot 159	6,245.00			857.65	7,102.65
Lot 160				1,084.93	8,984.93
Lot 161	7,900.00				
Lot 162	2,000.00			274.67	2,274.67
					\$38,743.95

Description of property.	Fee.	Cost.		Interest.	Total.
		Easements.	Other awards.		
Lot 180 to 184, inc.	12,037.50			1,653.13	13,690.63
Lot 179	6,250.00			858.33	7,108.33
Lot 178	6,250.00			858.33	7,108.33
Lot 176-177	7,900.00			1,084.93	8,984.93
<hr/>					
Block 4006,					\$6,892.22
Lot 202	6,150.00			844.60	6,994.60
Lot 203	5,850.00			803.40	6,653.40
Lot 204	7,400.00			1,016.27	8,416.27
Lot 205	5,000.00			686.67	5,686.67
Lot 206	5,900.00			810.27	6,710.27
Lot 207	5,900.00			810.27	6,710.27
Lot 208 to 211 inc.	20,240.00			2,779.63	23,019.63
<hr/>					
Block 4008,					\$64,191.11
Sec. Bronx & 180th St.	24,930.40			3,423.77	28,354.17

Property adj. westerly
side of N. Y. W.
Chester & Boston R.
R. Co. from 180th
St. north to Union-
port Rd. 404,507.68
Unionport Road and

Appealed

Birchall Ave. prop-
erty,
Lot 230 126.00
Lots 232-232 2,348.86
Lot 233 4,290.44
Lot 234 6,335.86
Lot 235 to 238 inc.. 7,622.61
Lot 239 615.00

17.30
322.57
589.22
872.87
1,046.84
84.46

143.30
2,671.43
4,879.66
7,208.73
8,669.45
699.46

\$24,272.03

S. E. C. Boston Rd. Cor. 179th St. Fee. Award not made (May 25, 1916).
S. W. C. Bronx St. and 179th St. Fee. Award not made (May 25, 1916).
Bet. Bronx St. and Bronx River at E. 179th St. Fee. Award not made (May 25, 1916).
S. W. C. Mott Ave. & E. 138th St.

57,655.95

13,270.48

70,926.43

Description of property.	Fee.	Easements.	Cost. Other awards.	Interest.	Total.
W. S. of Mott Ave., 74.25 S. of E. 138th St.		\$37,500.00	.....	7,150.00	\$44,650.00
					\$115,576.43
N. W. C., Mott Ave and 138 St.....			T. & P. \$14,000	.....	15,540.00
Block 2332.					
31-32-33-34 E. 138th St., bet. Park Ave. and Canal Street.....		49,250.00	... ..	1,576.00	50,826.00
Block 2332. Lot 28, bet. Park Ave. and Canal St. West about 75' S. of E. 138th Street.		43,000.00	.....	645.00	43,645.00
Block 2339, Easterly side Park Ave., bet. E. 135th St. and Harlem River, P. & T. Easements taken.....					\$94,471.00
				Award not yet fixed, May 25, 1916.	

Block 2339, Westerly side Mott Ave., bet. E. 138th St. and Exterior St. P. & T. Easements taken.....	Award not yet fixed, May 25, 1916.		
Block 2332, Easterly side Park Ave. 154.51' S. of E. 138th St.....	P. & T. 7,000	Private Purchase	7,000.00
Block 2346, Lot 18 N. W. Cor. Mott Ave and 146th Street.....	44,879.00	Private Purchase	44,879.00
Block 2346, Lot 22.....	40,500.00	Settlement after Appeal of Award	40,500.00
Block 2346, Lot 26 T. & P. Easement..	Award not yet fixed (May 25, 1916.)		
Block 2346, Lot 32, S. E. Cor. Walton Ave. and E. 149th St. T. & P. Ease- ments	Award not yet fixed (May 25, 1916.)		
Block 2332, Lot 94.....	T. & P. 24,500	Private Purchase	24,500.00
Block 2350, Lot 29.	38,000.00	Private Purchase	38,000.00
Block 2473, Lot 1.....	115,000.00	Private Purchase	115,000.00

Description of property.	Fee.	Easements.	Cost.		Total.
			Other awards.	Interest.	
Block 2482, Lot 6.....		142,000.00	.....	Private Purchase	142,000.00
Right-of-way under N. Y. Central R. R., near 135th Street.....			Permanent easements, taxes, rental (Temporary easement, etc.)		13,606.12
Southern Boulevard & Whitlock Ave. Borough of The Bronx.			Route Nos. 19 and 22, Borough of the Bronx.		
Block 2569, Lot 1, N. W. Cor. So. Blvd. and E. 138th Street.....		\$49,395.10	.....	2,963.70	52,358.80
Block 1780, N. E. Cor. Lexington Ave. and E. 131st Street.....		22,747.60	.....	1,110.84	23,858.44
Lexington Ave. 42d St. and Park Ave. Route 43 Conn connection, Borough of Manhattan.					
Easements N. W. Cor. Lexington Ave. and E. 42d St. Includes construc- tion		\$902,000.00	Private settlement, Gradual payment.		\$902,000.00
Grand Union Hotel Site, Block 1296, Lots 1, 7 and 9.....			Awards not yet fixed, (May 25, 1916.)		

Description of Property	Fee	Easements	Other Awards	Interest	Total
Block 126, Lot 15, S. E. Cor Murray St. and W. Broadway	195,000.00	.....	.....	20,605.00	215,605.00
Block 126, Lot 13, N. E. Cor. Broadway and Park Place	255,000.00	.....	.....	26,945.00	281,945.00
Block 125, Lot 11, N. Side of Park Pl. 74.8' E. of W. Broadway	142,000.00	.....	.....	15,004.67	157,004.67
					<hr/> \$654,554.67
Block 92, Lot 39, 33 Beekman St.,	76,625.00	.....	Private	24.86	76,649.86
Block 92, Lot 1, 35 Beekman Street . . .	82,100.00	.....	Private	Purchase	82,100.00
			Purchase	Purchase	
Block 92, Lot 1, 169 William Street . . .	69,000.00	.....	Private	Purchase	69,000.00
					<hr/> \$227,749.86

Rider "A" — Permanent easement under Post Office Building between Broadway at Park Place and Park Row at Beekman Street, Borough of Manhattan by agreement with the Secretary and Treasurer, consideration \$1.00.

No. 165-167 William St. Awards not yet fixed.			
Temporary and Permanent Easements Foot of Clark St. Land under Water and Upland.		T & P \$300,000.00	\$300,000.00
S. W. Cor. Clark and Fulton Sts., T. & P. Easements.		Title not yet taken (May 25, 1916).	
Steinway Tunnel, Route 26, Boroughs of Manhattan and Queens.			
Block 1296, Lots 41 & 42 156-8 E. 42d St., Manh.		Permanent easement included in assignment of Steinway Tunnel, I. R. T. Co. to City.	
Bulkhead line, East River to beyond Front St.			
Queens		"	"
Block 17, Part of Lot 1, 40 x 100, N. side of 4th to 4th St. & West Ave., Queens.		"	"
Block 41, Lots 10 and 11, S. Side of 4th St., 98' west of Jackson Ave., Queens.		"	"
Block 17, Part of Lot 1, 50 x 100, N. side of 4th St., 285' West of West Ave., Queens.		Fee included in assignment of Steinway Tunnel I. R. T. to City.	
Block 1354, part of Lot 9, N. Side E. 42d St., 250' E. of 1st Ave., Manh.		Interest \$2,310.00	Total \$24,310.00
		22,000	

Steinway Tunnel & Queensboro Plaza Extension, Route Fifty.

Block 71, S. Cor. Van Alst Ave., Hunters Point Ave., Queens...	P & T			
Sunnyside Yard at Diagonal Street	9,482.00			9,482.00
	29,196.55			
	3,637.93			32,834.48
Davis St. & L. I. R. Yard.		Award	Not yet	
Small gore	5,100.00	Appealed	settled	
			5-25-16	
North Short Frt. Yard, Steinway Tunnel Mouth to Davis Street.	P			
	230,000.00			230,000.00
Eastern Parkway Route & Livonia Ave. Extension, Routes 12 and 31.				
S. W. Cor. Nostrand Ave. & Eastern Parkway (Nostrand Ave. Route) Fee.	Award not accepted.			
	5-25-16			
A number of parcels between Buffalo Ave & E. Parkway and E. N. Y. Ave.	Award not accepted.			
	5-25-16			

Mr. Moss.—In connection with this list which I have just given of easements, I introduce a report made by the Committee's Auditor, John R. McNeille, covering the Astor House Wall.

“ASTOR HOUSE WALL.”

Section No. 1-A. Route Five.

Report to Counsel of Joint Legislative Committee for Investigation of Public Service Commission, First District, New York, N. Y. Dictated by John R. MacNeille, commencing Feb. 26, 1916. (The rest of this Report is being typewritten as rapidly as practicable.)

Q. What is your name? A. John R. MacNeille.

Q. Did I request you to make an examination of some of the work of the Engineering Department of the Public Service Commission, First District, in connection with the contract for section No. 1-A, Route No. 5? A. You did.

Q. And said section begins in Manhattan about 80' north of Dey Street, and extends northerly under Church Street private property, Vesey Street private property, Broadway to about 75' south of Park Place? A. It does.

Q. And said private properties are those of “St. Paul's Vestry” and “Vincent Astor Estate,” respectively? A. Yes.

Q. Was the contract for the construction of this section awarded by the Commission on 1912, September 16? A. It was.

Q. To F. L. Cranford? A. Yes.

Q. And the contract amount was \$982,740.70? A. Yes.

Q. When was the bid received on which said award was made? A. 1912 — September, 1911.

Q. And its amount was as just stated? A. Yes.

Q. Was said date the first on which such bids were received? A. No.

Q. You mean that previously bids had been received for this work? A. Yes.

Q. When? A. 1910, October 27th.

Q. What were they? A. For section No. 1 the lowest bid was \$5,863,194.00 and for section No. 2, \$7,677,464.20.

Q. I understand then that in 1912 new bids were received by the Commission on "revised plans?" A. That is correct.

Q. What change, among others, had been made in this connection? A. Section 1-A had been created as a separate section composed of a southerly portion of Section No. 2 of 1910, and there was omitted from Section No. 1 a southerly portion thereof, as per the plans of 1910.

Q. And the approximate cost of said two portions was? A. The Chief Engineer has stated that the last mentioned portion would have cost about \$900,000.00 and I have already stated that the first said portion was contracted for at about \$982,000.00.

Q. So said cost of the portion taken off from Section No. 1 was approximately equal, speaking roughly, to the portion taken off from Section No. 2? A. It was.

Q. Mr. MacNeille, what was the sum total of the lowest bids in 1910 for Sections 1, 2 and 2-A? A. \$15,001,006.95.

Q. And what was the similar total of the lowest bids in 1912 for Sections 1, 1-A, 2 and 2-A? A. \$5,473,190.00.

Q. And the 1912 total was less than the 1910 total by — A. \$9,527,816.95.

Q. That is a decrease of about —

Q. What was the estimated saving in cost of construction by the use of the "modified design" as substituted for the design shown on the contract drawings for said section in 1910? A. The Chief Engineer stated as of 1911, February 9, in his report to the Commission: \$1,294,873.00.

Q. And this "estimated saving" is less than the said difference of \$3,658,184.10 between the 1910 and 1912 "lowest bids" by the sum of \$2,363,311.10? A. That is correct.

Q. What were these large decreases between the 1910 and the 1912 amounts due to? A. The Chief Engineer may be able to explain.

Q. Has said contract been completed? A. Not entirely.

Q. How much remains to be done? A. The Chief Engineer may be able to state.

Q. But I want you to state. A. As of up to close of January 31, 1915, the "total estimated amount" by the Engineering Department of the value of the work done and materials furnished under this contract was \$1,133,535.95.

Q. But you stated that the amount of this contract was \$982,-740.70? A. I did.

Q. Then the total of the Engineer's estimates up to the first of February, 1915, exceed the "original contract amount" by \$150,-795.25. A. That is correct.

Q. And will there be further "extra payments" in this connection? A. There should be.

Q. What do you mean? A. That amounts additional to those comprehended in "last said estimated total" have been contracted for by the Commission.

Q. And approved by the Board of Estimate? A. No.

Q. I do not understand. A. Four successive "modifying contracts" have been made by the Commission during the year 1913, with said Contractor and none of them have been submitted by the Commission to the Board of Estimate for its approval.

Q. Have the payments provided for in these supplementary agreements been consented to by the Board? A. They have not.

Q. Has the Commission requested the Board of Estimate and Apportionment to appropriate money to pay the "extras" comprehended in said modifying contracts? A. It has.

Q. For what amount? A. \$363,024.67.

Q. When did the Commission so request? A. In December, 1914.

Q. Mr. MacNeille, you say there were four "modifying contracts" made by the Commission and the contractor for Section 1-A? A. Yes.

Q. When did the Board of Estimate approve the "original contract?" A. On September 19, 1912.

Q. What were the dates on which these agreements were made? A. The formal date of award of the original contract was September 27, 1912.

A. Two months later, on 1912, November 26, certain unit prices were stricken out of said contract by the terms of the first modifying contract.

B. On April 18, 1913, the Commission made a second modifying contract which, according to Assistant Counsel of the Commission "merely had the effect of restoring a price for underpinning the building which was in the contract, as

the contract went before the Board of Estimate and Apportionment, and was executed, but which was later stricken out by a modifying agreement because no quantity had been given in the contractor's proposal, and which it was subsequently found necessary to restore."

C. On May 23, 1913, the Commission made a third modifying contract for "underpinning St. Paul's church building."

D. On August 19, 1913, the Commission made a fourth modifying contract for a wall and piers under the southeasterly corner of the "Astor House Property."

Q. What was the aggregate amount of extra payments provided for by these four modifying contracts?

NOTE.—The work of dictating and typewriting this brief for the Astor house wall has been discontinued at this time in accordance with the instructions of Col. Hayward to Mr. MacNeille. The working papers for the completion of said brief are in Mr. MacNeille's possession and the dictation of the remainder can readily be done when, as, and if required.

CONTRACT NUMBER 4.

Center Street Loop, Borough of Manhattan.

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
142 Center St.....	\$58,020.00			\$13,924.80		\$71,944.80
144 Center St.....	55,928.00			13,422.72		69,350.72
146-150 Center St. & 113-115 Walker St..	243,875.36			58,530.09		302,405.45
117 Walker St.....	61,890.00			14,583.60		76,473.60
119-121 Walker St.....	89,750.00			39,410.30		129,160.30
				Total	\$649,604.87	
T & P						
123-125 Walker St.....		1,250.00		300.00		1,550.00
Private Purchase						
133-137 Center St. & 112-114 White St...	126,000.00			4,011.00		130,011.00
139-143 Center St.....	165,176.75			26,015.34		191,192.09

145-149 Center St. & 105-109 Walker St...	174,470.00	Private Purchase	4,387.49	178,857.49
Total				\$500,060.58
151-155 Center St. & 106-108 Walker St., 240 Canal St.....	146,755.00		23,113.91	169,868.91
166 Center St. & 233- 235 Canal St.....	89,529.00		15,249.77	104,788.77
157-163 Center St. & 239 Canal St.....	79,316.32		30,543.54	109,859.86
193-197 Center St.....	180,375.00		30,723.87	211,098.87
199-201 Center St. & 1 & 3 Howard St.....	117,975.00		30,723.87	138,070.06
Total				\$459,028.79

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost	Total.
3 & 5 Cleveland Place..	142,356.02			22,207.54		164,563.56
1 Cleveland Pl. & 404						
Broome St.	57,000.00					
402 Broome St.	40,000.00			8,892.00		65,892.00
400 Broome St.	52,434.72			Private Purchase		40,000.00
				8,179.82		60,614.54
				Total		\$331,070.10
Small triangular plot known as Plot X in Block 481, Broome St.						
Area 6.4 sq. ft.	80.00			12.84		92.84
168 Bowery	52,252.00			8,952.50		61,204.50
Block 478, Lot 31, small triangular parcel ss.						
of Delancey St. Ext..	4,476.00			875.80		5,351.80
				Total		\$66,556.30

164 Elizabeth St.....	T & P 39,000.00	6,682.00	45,682.00
176 Bowery	45,184.00	8,841.00	54,025.00
Block 478, Lot 9, small Gore S. E. Cor. Elizabeth St. & Delancey St. Ext.	T & P 60.00	10.28	70.28
Block 155, Lot 36 North- erly corner Center & Lafayette Sts.	165,000.00	28,834.78	193,834.78
Block 186, Lots 1, 24 & 25, N. E. Cor. Pearl & Center Sts.	Private Purchase 235,000.00	16,175.63	251,175.83
7-11 Cleveland Place...	T & P 1,600.00	249.60	1,849.60
398 Broome St.	T & P 14,000.00	2,184.00	16,184.00

Description of Property.	Fee.	Easements.	Other Awards.	Cost.	
				Interest.	Total.
396 Broome St.....			T & P 6,788.00	1,058.93	7,846.93
183-5 Mulberry St.....			T & P 1,970.80	307.44	2,278.24
Block 481, Lots 31 & 36 S. W. Cor. Mulberry St. & Delancey St. Ext.			T & P 40,145.00	Private Purchase	40,145.00
Block 158, Lots 38 & 39 Church of St. An- drews			T— 8,500.00 P— 27,000.00	2,550.00	37,750.00
22 City Hall Pl.....		T— P—	2,500.00 2,700.00	442.00	5,642.00
Fourth Avenue Subway, Borough of Brooklyn.					
S. Side Nassau St. 260' east of Jay St. Block 107, Lot 1.....		20,000.00	Private Purchase		20,000.00

Parcel 1, Block 2093, Lot , easements under Crescent Theater.....	P— 43,276.88			
	T— 1,353.75	12,548.65	57,179.28	
Parcel 2, Block 2093, Lot 10.....	P-16,400.00			
	T- 284.00	3,024.50	22,069.00	
Parcel 3, Block 2093, Lots 9-82.....	T-18,926.15			
	P-48,262.60	8,000.00	108,759.15	
Parcel 4, Block 2093, Lot 8.....	P-42,652.00	7,416.66	89,762.65	
	T-12,164.00			
Parcel 5, Block 2093, Lot 7.....	P-56,862.00	1,200.71	119,686.56	
	T-40,473.87			
Parcel 6, Block 2093, Lots 4, 70 & 71..	T-76,250.00	107,638.95	933,888.95	
	P-400,000.00			
Parcel 7, Block 2093, Lot 3.....	P-90,376.00			
	T-19,619.55	20,526.98	153,116.53	
Parcel 8, Block 2093, Lot 1.....	P-80,000.00			
	T-21,074.00	2,000.00	142,222.08	
				<hr/>
				\$1,569,504.92

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Parcel 9, Block 2094, Lot 2.....		27,050.00		P- 6,950.00		
				T- 5,778.75	4,236.30	44,265.05
Parcel 10, Block 2094, Lot 1.....		7,393,.50		P-29,574.00		
				T- 7,054.51	6,935.26	51,592.27
				P-70,125.00		
Parcel 11, Block 2094, Lot 49.....		46,885.00		T-12,830.28	32,279.27	162,379.55
			P-64,600.00			
Parcel 12, Block 2094, Lot 48.....		11,400.00	T-15,855.00	.....	14,632.82	106,487.80
			P-72,250.00			
Parcel 13, Block 2094, Lot 47.....		12,750.00	T-15,956.25	.....	15,561.25	116,517.50
			P-140,244.75			
Parcel 14, Block 2094, Lot 46.....		46,748.25	T-47,638.11	60,759.00	46,078.90	341,469.00
			P-65,472.31			
Parcel 15, Block 2094, Lot 45.....		11,553.93	T-11,168.54	2,433.59	14,403.78	105,032.10
			P-73,151.00			
Parcel 16, Block 2094, Lot 44.....		18,288.00	T-27,371.00	41,887.00	25,760.20	186,457.80
			P-160,181.23			

Parcel 17, Block 2094, Lot 42.....	53,393.74	T-22,004.53 P-146,749.00	.....	35,187.20	270,766.70
Parcel 18, Block 2094, Lot 40.....	48,917.00	T-27,528.77	1,800.00	32,814.98	257,809.75
					<u>\$1,642,770.60</u>
Block 2093, Lot 63, No. 647 Fulton St..	41,452.00	P-41,453.00 T-26,108.90	4,058.54	14,166.42	127,238.86
Block 2093, Lot 62, No. 649 Fulton St..	17,700.00	P-41,300.00 T- 8,327.50	160.01	9,834.87	77,322.38
		Total			<u>\$204,561.24</u>
Block 2107, Lot 15, S. E. Cor. Fulton St. and Rockwell Place.....	22,400.00	P-33,600.00 T-16,336.00	10,400.00	12,410.40	95,146.40
Block 2107, Lot 16, 584 Fulton St...	18,728.97	P-34,842.40 T-19,669.67	7,500.00	12,018.24	92,759.28
Block 2107, Lot 17, 586 Fulton St....	22,498.43	P-41,782.82 T- 9,603.13	589.70	10,580.18	85,054.26
Block 2107, Lot 18, 588 Fulton St..	52,418.00	P-28,867.00 T-12,911.09	130.00	21,758.48	116,084.52
		P-30,896.25			

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Block 2107, Lot 19, 590 Fulton St.....		13,241.25	T-15,993.09 P-33,000.00	.....	9,018.90	69,149.49
Block 2107, Lot 21, 594 Fulton St.....		10,606.25	T-14,825.06 P-31,819.75	130.00	21,474.71	111,460.77
Block 2107, Lot 1, 594 Fulton St.....		10,600.25	T-12,795.46 P-35,175.00	490.04	8,513.82	64,225.32
Block 2107, Lot 22, 596 Fulton St.....		11,725.00	T- 7,879.37 P-37,500.00	750.00	8,377.53	63,906.80
Block 2107, Lot 23, 598 Fulton St.....		12,500.00	T- 9,937.50	.....	9,057.67	68,995.17
						<u>\$766,782.01</u>
<hr/>						
		Fee P. & T.				
Block 2107, Lot 24, 600 Fulton St....		43,981.68	Lumped	.....	9,016.24	52,997.92
Block 2107, Lot 25, 602 Fulton St....		80,944.00	.....	.....	16,593.62	97,537.52
						<u>150,535.44</u>
<hr/>						
		Fee P. & T.				
Block 2107, Lot 27, 74 Ashland Pl....		15,873.04	Lumped	.....	3,253.97	19,127.01

Block 2107, Lot 28, 76 Ashland Pl....	Fee P. & T. 13,559.53	.....	2,779.68	16,339.21
Block 2106, Lot 29, 78 Ashland Pl....	Fee P. & T. 10,365.28	.....	2,124.87	12,490.15
Block 2107, Lot 30, 80 Ashland Pl....	Fee T. & P. 9,514.37	Lumped	1,950.44	11,464.81
Block 2107, Lot 31, 82 Ashland Pl....	Fee T. & P. 9,353.29	.....	1,917.42	11,270.71
Block 2107, Lot 32, 84 Ashland Pl....	Fee & T. 8,912.58	.....	1,827.13	10,739.98
Block 2107, Lot 33, 86 Ashland Pl....	Fee & T. 8,821.63	.....	1,808.43	10,610.06
Block 2107, Lot 34, 88 Ashland Pl....	Fee & T. 10,675.41	.....	2,188.45	12,863.86
Block 2107, Lot 35, 21 Lafayette Ave...	25,272.87	.....	5,180.93	30,453.80
Block 2107, Lot 36, 19 Lafayette Ave...	Fee & T. 15,962.94	.....	3,272.40	19,235.34
Block 2110, Lot 33, 20 Lafayette Ave...	25,071.30	.....	5,139.61	30,210.91
Block 2110, Lot 32, 18 Lafayette Ave...	Fee & T. 14,332.82	.....	2,938.20	17,271.02
Block 2110, Lots 34 & 35, 110 & 112	Fee & T.			

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Ashland Pl.		15,331.84 Fee & T.	.....	.....	3,143.02	18,474.86
Block 2110, Lot 36, 114 Ashland Pl....		7,861.12 Fee & T.	.....	.....	1,611.52	9,472.64
Block 2110, Lot 37, 116 Ashland Pl....		7,847.27 Fee & T.	.....	.....	1,608.69	9,455.96
Block 2110, Lot 38, 118 Ashland Pl....		7,840.92 Fee & T.	.....	.....	1,607.38	9,448.30
Block 2110, Lot 39, 120 Ashland Pl....		7,969.46 Fee & T.	.....	.....	1,633.73	9,603.19
Block 2110, Lot 40, 122 Ashland Pl....		8,014.79 Fee & T.	.....	.....	1,643.03	9,657.82
Block 2110, Lot 41, 124 Ashland Pl....		8,586.30 Fee & T.	.....	.....	1,760.19	10,346.49
Block 2110, Lot 42, 126 Ashland Pl....		8,002.36 Fee & T.	.....	.....	1,640.48	9,642.84
Block 2110, Lot 43, 128 Ashland Pl....		12,565.56 Fee & T.	.....	.....	2,575.92	15,141.48
Block 2110, Lot 44, 130 Ashland Pl....		6,069.17 Fee & T.	.....	.....	1,244.17	7,313.34

Block 2110, Lot 45, 132 Ashland Pl....	Fee & T. 5,823.51	.....	1,193.81	7,017.81
Block 2110, Lot 9, 134 Ashland Pl....	Fee & T. 10,377.86	.....	2,127.46	12,505.32
Block 2110, Lot 8, 136 Ashland Pl....	Fee & T. 10,294.55	.....	2,110.38	12,404.93
Block 2110, Lot 7, 138 Ashland Pl....	Fee & T. 13,031.94	.....	2,671.54	15,703.48
Block 2110, Lot 6, 140 Ashland Pl....	Fee & T. 9,159.87	.....	1,877.77	11,037.64
Block 2110, Lot 5, 142 Ashland Pl....	Fee & T. 15,634.87	.....	3,205.14	18,840.01
Block 2110, Lot 4, 144 Ashland Pl....	Fee & T. 13,894.29	.....	2,848.32	16,742.61
Block 2110, Lot 3, 146 Ashland Pl....	Fee & T. 22,220.37	.....	4,555.17	26,775.54
Block 2110, Lot 1, cor. Ashland & Han- son Pl.	Fee & T. 89,445.19	.....	18,336.26	107,781.45
Total				539,172.53

Description of Property.	Fee.	Easements.	Other Awards.	Cost	
				Interest.	Total.
Block 2084, Lot 58.....		20,031.67	.....	4,106.49	24,138.16
Block 2093, Lot 50.....		22,441.32	.....	4,600.47	27,041.79
Block 2048, Parcel 40.....		1,171.47	.....	240.15	1,411.52
Parcel 41		19,759.92	.....	4,050.78	23,810.70
Total					25,222.32
Block 2060, Parcel 37.....		1,866.40	.....	382.61	2,249.01
Parcel 38		50.00	.....	10.25	60.25
Parcel 39		11,092.22	.....	2,273.90	13,366.12
Total					15,675.38

RIDER "B."— Permanent easement under Long Island Railroad Terminal in block bounded by Flatbush Avenue, Ashland Place, Hanson Place, Fort Greene Place, and Atlantic Avenue, Borough of Brooklyn; for full width of station, consideration for easement, \$200,000.00; railroad company to construct underpinning slab under their station without charge to city for temporary easement, at actual cost, the total cost to aggregate not more than \$300,000.00.

Flatbush Ave., St. Felix & Fulton Sts. Route, Borough of Brooklyn.

S. W. Cor. of St. Felix & Fulton Sts. Title not yet taken (May 25, 1916).

Blocks 118, Lots 6-16, inclusive; 151-175, inclusive,

Flatbush Ave. Eleven parcels

(May 25, 1916.)

Awards made but subject to appeal by city. Probably total cost \$400,000.

New Utrecht Ave. Route.		Borough of Brooklyn.	
38th St. Cut	150,000.00	1,000,000.00	Agreements 1,150,000.00
Block 6314, Lot 26. Part of plot taken in fee.		Award not yet made (5-25-16.)	
Block 6314, Lot 19, 8125 New Utrecht Ave.		Private	3,500.00
Block 6314, Lot 17, 8129 New Utrecht Ave.		Purchase	3,500.00
Block 6314, Lot 15, 8133 New Utrecht Ave.		Award not yet made (May 25, 1916).	
Block 6314, Lot 12, Rear of 8137 New Utrecht Ave.		Fee	1,000.00
Block 6314, Lot 12, Rear of 8137 New Utrecht Ave.		Award not yet made (May 25, 1916).	
Block 6314, Lot 12, Rear of 8137 New Utrecht Ave.		Private	\$1,000.00
Block 6314, Lot 12, Rear of 8137 New Utrecht Ave.		Purchase	\$1,000.00

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Block 6314, Lot 94, Large rearage 1743 84th St.		5,400.00	.....	.....	Private Purchase	5,400.00
Block 6314, Lot 91, 1745 84th St., in fee			Award not yet made (May 25, 1916).			
Block 6314, Lot 86, 1749 84th St. Part of front taken in fee.....			Award not yet made (May 25, 1916).			
Block 6326, Lot 23, part of front of 1752 84th St.	Fee		Award not yet made (May 25, 1916).			
Block 6326, Lot 59, 1762 84th St.....	9,750.00		.....	.....	Private Purchase	9,750.00
Block 6326, Lot 62, 1768 84th St.....	3,500.00		.....	.....	Private Purchase	3,500.00
Block 6326, Lot 64, part of large plot..			Award not yet made (May 25, 1916).			
Block 6326, Lot 76, 4 of 5 buildings Nos. 8430-6 18th Ave.....		30,300.00	.....	.....	Private Purchase	30,200.00

Award not yet made (May 25, 1916).		
Block 6332, Lot 1, 8417-21, incl., 18th Ave.		
Block 6344, Lot 10, small gore adjoining west end right-of-way	600.00	Private Purchase 600.00
Block 6344, Lot 12 known as 8500-8512 Bay 19th St.	12,500.00	Private Purchase 12,500.00
Block 6344, Lot 15, 1822-4 85th St....	8,500.00	Private Purchase 8,500.00
Block 6344, Lot 17, 1826 85th St.....	8,500.00	Private Purchase 8,500.00
Block 6344, Lot 62 130 ft. by 100 ft., vacant.....	16,250.00	Private Purchase 16,250.00
Block 6344, Lot 59, 70 ft. by 100 ft., vacant.....	8,750.00	Private Purchase 8,750.00
Block 6344, Lot 57, 1845 86th St.....	8,250.00	Private Purchase 8,250.00

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Permanent easements over Nassau Elec.						
R. R. right-of-way at three points; Block 6314, Lot 24; Block 6332, Lot 10; Block 6344, Lot 11; small gore..						
Title not yet taken, May 25, 1916.						
Whitehall St., East River-Montague St. Route — Boroughs of Manhattan and Brooklyn.						
Block 13, permanent and temporary ease- ments in Lots 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 27, 31, 33 & 34, Broad- way & Morris St.....						
Award not yet made (May 25, 1916).						
Part of Montague St. Upland and land under water						
Award not yet made (May 25, 1916).						
Easements under Citizens Bldg., Bklyn, Block 144, Lot 1.....						
Title not yet taken (May 25, 1916).						
Block 2078, Lot 31, 138 Willoughby St., Brooklyn						
		6,350.00	.....	.....	158.75	6,508.75

Block 2078, Lot 30, 136 Willoughby St., Brooklyn	6,700.00	.....	.....	167.50	6,876.50
Block 2078, Lot 29, 134 Willoughby St., Brooklyn	6,200.00	.....	.....	155.00	6,355.00
Block 2078, Lot 32, S. W. cor. Flatbush Ave. Ext. & Willoughby St., Brooklyn	4,500.00	.....	.....	112.50	4,612.50
	366.43	.....	.....	5.06	371.49
				Total	24,715.24
Route 5, Manhattan Borough.					
Astor House, Block 88, Lot 1, Broadway & Vesey St. ....	.....	T. & P. 597,400.00	Private Purchase	155,035.56	752,478.56
St. Paul's Chapel, Block 87 .....	.....	129,405.00	Private Purchase	.....	129,405.00
Gravesend Ave. Route, Brooklyn Borough.					
Lot 20x100 E. side 10th Ave., adjoining right-of-way of Culver Line	650.00	.....	Private Purchase	.....	650.00

Description of Property.	Fee.	Easements.	Other Awards.	Interest.	Cost.	Total.
Right-of-way, 10th Ave., Gravesend; Kings Highway and Coney Is.....		Not yet acquired.				
Physical connection, Canal St. & Broadway, Borough of Manhattan.						
Easement for railroad and station entrance to be secured and deeded by the N. Y. Municipal Ry. Corp. to City in accordance with terms of Contract No. 4						
	

Mr. Moss.—It has appeared that the expense of the city for subway construction will be much larger than was estimated, when the contracts were signed.

Testimony illustrating this fact will be shown in evidence of the witness MacInnis, and I also call attention to the speech of Mayor John Purroy Mitchel at the dinner of the Committee of 107 at the Hotel Astor, May 2, 1916.

“ May 25, 1916.

“ Hon. Wm. A. Prendergast, Comptroller, City of New York,
Municipal Building, New York City.

“ Sir:

“ I hand you herein for your use a supplementary and final table of elevated railway sections with the approximate cost of the railroad duct construction on these sections to date of May 1, 1916. The table transmitted under date of May 22, 1916, together with the following, completes the information for the above cost, in accordance with a request by Mr. Frazee:

“ *Approximate Total Amount Estimate Chargeable to Underground Conduit, Including all Estimates Submitted to May 1, 1916.*

		Regular & Article XII (Gross Estimated)
Route	Section	
50.....	..	\$33,285.92
36 and 37....	1	22,141.64
36 and 37....	2	55,613.32
36 and 37....	3	82,520.25
		<hr/>
		\$193,561.13

“ Very truly yours,
“(Signed) JAMES B. WALKER,
“ Secretary.”

"Hon. Wm. H. Prendergast,

"Comptroller, City of New York,

"Municipal Building, N. Y. City.

"Dear Sir: I hand you herein, for your use, a table of elevated railway sections with the approximate cost of the railroad duct construction on these sections to date of May 1, 1916, together with the approximate cost of one completed elevated section, in accordance with a request by Mr. Frazee.

"Approximate total amount estimate chargeable to underground conduit, including all estimates submitted to May 1, 1916.

Route.	Section.	Regular		Article XII	
		Gross.	Net.	Gross.	Net.
16	1	\$75,115.09	\$65,243.21	\$1,353.33	\$1,170.47
16	2	80,890.47	68,852.22	9,157.84	7,785.46
18	1	111,446.09	96,840.44	2,204.97	1,984.47
18	2	57,548.10	51,039.38	269.64	238.77
19 and 22	1-A				
		Gross Reg.			
		& Art. XII			
39	2	11,889.30			

Final estimate has been rendered on this section.

"Very truly yours,

“(Signed) JAMES B. WALKER,

“Secretary.”

“June 21, 1916.

" Mr. Frank Moss,

" Counsel to Thompson Legislative Committee,

" No. 233 Broadway, New York City.

" Dear Sir: In accordance with your request of the 10th inst., I herewith submit information concerning the amounts expended by the city of New York from 1901 to 1915 (both years incl.) in connection with the grade crossings within the city limits which were eliminated during that period or are now in the process of elimination.

" Briefly summarized the expenditures were as follows:

THE BRONX.	Location.	R. R. Affected.	Amount Paid	
			City's Share.	by City.
(a)	Depot Place and W. 177th St.	New York Central, Putnam Div. & Spuyten Duyvil & Port Morris Branch.	Cost of Approaches, including d a m-ages a/c change of grade	\$322,313.54
(b)	Fordham Rd. (Univ. Heights Bridge).	New York Central, Putnam Div. & Spuyten Duyvil & Port Morris Branch.	Bridge over Harlem River & Approaches to bridge over R. R. tracks.	25,000.00 (estimated)

Law authorizing improvement, Ch. 423, L. 1903 as amended by Ch. 634, L. 1905.

Location.	R. R. Affected.	City's Share.	Amount Paid by City.
THE BRONX.			
(c) Kingsbridges Rd., Bdwy. Corlear St. Tibbett Ave., E. 230th St. W. 230 St. & W. 227th St.	N. Y. Cent., Spuyteu, Duynvil and Port Morris Branch.	Cost of the land ac- quired for new route	551,025.00
Law authorizing improvement, Ch. 423, L. 1903 as amended by Ch. 615, L. 1904.			
(d) E. 233d St.	N. Y. & Harlem.	Bridge over Bronx River and cost of approaches to bridge over R. R. tracks	193,072.70
Law authorizing improvement, Agreement with Railroad Co.			
(e) Streets from N. side Westches- ter Ave. to near Terminus of Port Morris Branch (E. River).	N. Y. Central, Port Morris Branch.	Bridges and ap- proaches with al- lowances to R. R. Co. for abandoned site R. R. de- pressed tracks . . .	246,522.95
Law authorizing improvement, Ch. 424 L. 1903.			
(f) Broadway at Van Cortlandt.	N. Y. Central, Putnam Division.	One-quarter	9,720.51
Law authorizing improvement, Secs. 62 & 65 of R. R. Law.			

BROOKLYN.

(g) Railroad & Atlantic Aves. (Foot Long Island. Passengers way). One-quarter 2,063.84

Law authorizing improvement, Secs. 91-97 of R. R. Law and Pub. Ser. Com. order 9-30-13.

(h) Atlantic Ave. Improvement. Long Island. One-half 1,432,264.10
Law authorizing improvement, Ch. 499, L. 1897 as amended by Ch. 452, L. 1902.

(i) Bay Ridge and Long Island. One-half with limit of \$2,500,000.00. 2,015,000.00
(j) Brighton Beach Improvements. Brooklyn Heights. One-half with limit of \$1,000,000.00. 802,187.41
Law authorizing improvement, Ch. 507, L. 1903 as amended by Ch. 603, L. 1904, Ch. 635, L. 1905, Ch. 735, L. 1907.

QUEENS.

(k) Main Line of L. I. R. R. between Sunnyside Yard & Jamaica, the Montauk Div. through Richmond Hill and portions of Atlantic Div. and old Southern Rd. in Jamaica. Long Island. \$575,000.00 375,000.00

Law authorizing improvement, Agreement of 7-21-11 with L. I. R. R. Co., ratified by Ch. 330, L. 1913.

Location.	R. R. Affected.	City's Share.	Amount Paid by City.
(1) Jamaica Ave. (Widening).	Long Island.	One-half	12,834.30
	Law authorizing improvement, Sec. 90 of R. R. Law and Pub. Ser. Com. order 1-19-12.		
(m) Flushing, Lawrence St. to Long Island. Broadway. (Nine crossings.)		One-quarter limited to \$200,000.00 ..	200,000.00
	Law authorizing improvement, Secs. 91-97 R. R. Law and Pub. Ser. Com. order 12-30-10 and 6-28-12.		
(n) Fresh Pond Rd. & Metropolitan Long Island. Ave. Bushwick Jct.		One-quarter (On account. Cost to city may be \$25,000 more).	\$75,000.00
	Law authorizing improvement, Secs. 91-97 of R. R. Law and Pub. Ser. Com. order 12-8-11.		
RICHMOND.		All	\$10,825.34
(o) Making plans for various elimi- nations.	No authorization.		
(p) Ambloy Rd. at Huguenot Ave.	Staten Island.	One-quarter	17,859.68
	Law authorizing improvement, Secs. 91-97 of R. R. Law and Pub. Ser. Com. order 2-7-11.		

(q) Amboy R.R. at Giffords.	Staten Island.	One-quarter	25,391.28
Law authorizing improvement, Secs. 91-97 of R. R. Law and Pub. Ser. Com. orders			
2-24-11 and 5-21-12.			
Total paid by city per above statement.			\$6,316,080.65

Other Important Improvements avoiding Grade Crossings which were Made by City and R. R. Companies Jointly.

MANHATTAN.

(r) Park Ave. Improvement 45th- N. Y. Central.
56th Sts.

\$600,000.00 toward
cost of bridges ex-
cept viaduct car-
rying Park Ave.
over tracks from
49th St. to 45th
Sts. City stands
all of said via-
duct also pays ex-
tra cost due to
width of 45th St.
bridge exceeding
50 feet.

\$61,065.19

Law authorizing improvement, Ch. 425, L. 1903, amended by Ch. 639, L. 1904,
Ch. 403, L. 1908, Ch. 555, L. 1910.

Location.	R. R. Affected.	City's Share.	Amount Paid by City.
QUEENS.			
(s) Viaduct across Sunnyside Yd.	Pa. Tunnel and Terminal R. R.	One-half	170,889.91
L. I. City forming approach to Blackwell's Is. Bridge (Queens- boro Bridge).	Co.		
	Law authorizing improvement, Agreement between city and R. R. Co., 6-21-07.		

Note.—Under (r) by subsequent amendment to Ch. 425, L. 1903, and an agreement with the railroad company dated 4-28-05, city's share of this viaduct was made 70 per cent. instead of 100 per cent.

Section 94 of the Railroad Law provides that the cost of constructing new crossings shall be apportioned as follows:

Eliminating existing crossings, R. R. Co., one-half, State one-fourth, city one-fourth.

New streets across railroads, R. R. Co. one-half, city one-half.

New railroads across streets, R. R. Co. pays all.

“ In the absence of any agreement between the city and the railroad companies to the contrary, the costs of the more recent eliminations, viz.: those indicated in the foregoing list by the letters (f), (g), (l), (m), (n), (p) and (q) have been apportioned on the above basis.

“ The Woodside improvement (k) to which your letter refers was made the subject of a special agreement, dated July 21, 1911, between the city and the Long Island Railroad Company by which the city was to contribute \$575,000 in addition to conveying to the said railroad company title to property in certain streets which were to be discontinued and closed. Of the sum named (\$575,000), \$375,000 has been paid by the city. The agreement above referred to was subsequently ratified by legislative act (chapter 330 of the Laws of 1913).

“ The earlier improvements, as may be noted, were usually under special acts.

“ Chapter 423 of the Laws of 1903 provided for the elimination of grade crossings on the Spuyten Duyvil and Port Morris Branch and the Putnam Division of the N. Y. C. & Hudson River R. R. at Depot Place, West 177th Street and Fordham Road — improvements (a) and (b) — by bridging the railroad tracks, and required that the railroad company construct necessary bridges and abutments while the city was required to make all necessary changes in streets, construct approaches and pay damages to buildings. The work of eliminating the grade crossing at Fordham Road was joined with that of constructing a new bridge over the Harlem River, known as the University Heights bridge, the railroad company paying for that part of the structure which crossed the railroad tracks. The total cost to the city of the University Heights bridge, including approaches, was \$1,184,956.92; of this amount it is estimated that but \$25,000 is properly chargeable to the grade crossing elimination.

“ Chapter 423 of the Laws of 1903 also provided for a change in the route of the Spuyten Duyvil and Port Morris Branch of the New York Central & Hudson River Railroad Company and the ‘elimination, abolition or avoidance’ of

crossings at Kingsbridge Road, Broadway, Corlear Street, Tibbett Avenue, East 230th Street, West 230th Street and West 227th Street. Improvement (c). The change in route discontinued and avoided grade crossings at the seven points named and it was not necessary on account thereof to provide new crossings either above or below grade. The city, under the law, was required to pay the 'cost and expense of acquiring all such lands — right of way or easements as may be necessary or required for the roadway and route altered—. ' The acquisition of land, etc., referred to cost the city approximately, \$600,000 but as the railroad company paid the city \$50,000 for certain lands under water, the net disbursements by the city were but \$551,025 as indicated.

"In connection with the work of eliminating the grade crossings at East 233d Street, improvement (d), a bridge was constructed over the Bronx River. The New York and Harlem R. R. Co. by agreement with the city, built a bridge over the railroad tracks while the city built the approaches thereto and the bridge over the river. In view, however, of the situation at that point being such as to make a new bridge an essential part of the grade crossing elimination, it is felt that the total expenditure by the city (\$193,072.70) can fairly be considered as the cost to it of such elimination.

"In order to abolish grade crossings on the Port Morris Branch of the New York Central & Hudson River R. R., improvement (e), provision was made by chapter 424 of the Laws of 1903 to change the line of said branche so that from the N. S. of Westchester Avenue to a point near the East River, it would run through St. Mary's Park. The railroad tracks were to be relocated and depressed at the expense of the railroad company. The cost of constructing necessary bridges over the depressed tracks and the approaches thereto was placed upon the city. The city also paid, approximately, \$60,000 to acquire property abandoned by the railroad company.

"I think from your letter that you are familiar with the nature of the undertakings known as the Atlantic Avenue improvement (h) and the Brighton Beach improvement (j).

“Chapter 499 of the Laws of 1897, as amended by chapter 452 of the Laws of 1902, provided that the city should bear one-half the cost of the Atlantic Avenue improvement, with the proviso, however, that the city's share was limited to \$1,250,000. In connection with the change of grade of tracks it was necessary to make changes in sewers and water pipes, the cost of which amounted to, approximately \$190,000. The Board for the Atlantic Avenue improvement decided that the cost of changing said sewers and water pipes should be paid entirely by the city, and it was evidently decided that such cost was outside of the \$1,250,000 limitation. Including said costs the total disbursements, as shown, amounted to \$1,432,264.10.

“The so-called ‘Bay Ridge’ improvement (i), and the Brighton Beach improvement (j), were authorized in the same act (ch. 507, L. 1903), and were placed under the supervision of the Brooklyn Grade Crossing Commission. The amount of the city's share of the cost (one-half) was in each instance limited, as shown on the statement heretofore given, except that in the case of the Bay Ridge improvement ‘such limit of cost shall be increased if necessary so as to include one-half the cost of viaducts or bridges constructed across streets or avenues not yet legally opened, intersecting the right-of-way of the railroads affected by the Bay Ridge improvement * * *.’ Improvement (i), as authorized, contemplated the general abolishment of all grade crossings of the Long Island Railroad then existing in the Borough of Brooklyn, and the work is not yet finished.

“Improvements (r) ‘Park Avenue improvement, 45th to 56th Streets,’ and (s), viaduct across Sunnyside yard are not strictly elimination of grade crossing matters, but they had to do with the carrying of streets over tracks and being large undertakings may be of interest to you.

“With these two exceptions, we have not included in this report highway bridges constructed over railroad tracks at points where no highway crossings previously existed.

“In a report dated December, 1910, to Mr. Edward M. Bassett, then Public Service Commissioner, from Mr. Robert

H. Whitten, Librarian-Statistician, which report was entitled 'Review of Grade Crossing Elimination, Digest and Bibliography,' the apportionment of costs is treated quite wully and instructively under the following heads:

"Apportionment based on responsibility.

"Apportionment based on benefits.

" 1. Benefits to the city;

" 2. Injury to the city;

" 3. Benefits to property owners in increased land values;

" 4. Benefits to street railway;

" 5. Benefits to the railroad."

"The St. Louis Public Library Monthly Bulletin of July 1, 1913, also devotes about sixteen pages to a 'Digest of Reports from Cities,' showing the different methods of apportionment of costs and the authority which supervises grade crossing matters in different localities.

"Both of the above papers on file in the Municipal Reference Library, Municipal Building, Manhattan, and are available for reference at any time. On account of the papers mentioned being quite voluminous, we have not been able to make copies of them and no extra copies are available here.

"I would also refer you to the report of the proceedings of the Annual Convention of the National Association of Railway Commissioners for the year 1915, page 42, on which appears a report of the Committee on Grade Crossings, together with an appendix prepared by Mr. James B. Walker, Secretary to the Public Service Commission for the First District, State of New York, in reference to the grade crossing law of various states, and to volume I of the report of said Public Service Commission for 1914, page 236, where can be found the record of the Commission in the elimination of grade crossings. Probably both of these publications can be obtained from the office of the Commission.

"Appended hereto is an excerpt from the 1914 annual report of Mr. Nelson P. Lewis, Chief Engineer of the Board of Estimate and Apportionment, in which is discussed the principles involved in the apportionment of the cost of the

elimination of railway grade crossings. Mr. Lewis is the official representing the city of New York, who has had most to do with this subject, and I am sure he will be able to give you much desirable information relative to the matter in hand.

“Yours very truly,

“(Signed) ALEX. BROUGH,

“Deputy and Acting Comptroller.”

ADDENDUM.

With reference to crossings at grade, Mr. Nelson P. Lewis, Chief Engineer of the Board of Estimate and Apportionment, in his report for the year 1914 says in part:

“The value of the railroad as a means of transportation and the important part which it plays in the development and growth of a city is generally recognized. Essential as it is to the prosperity of a city, it presents serious physical problems and often great difficulties in the development of a convenient and adequate street system. The railroad considered in this connection is not that which supplies intraurban transit, whether upon, under or over the city street, but the lines which connect the city with the rest of the world, which accommodate long distance travel, and which supply the needs of the community and distribute its manufactured products. The different railway lines entering a city cannot be permitted to divide it into sections which are isolated, the one from the other. The streets cannot be abruptly stopped at the railroad tracks, but must be carried across them, even though to do so involves danger or large expense. When towns or districts of an existing town are being rapidly developed into important manufacturing, commercial or distributing centers the railroads are eagerly welcomed, the more of them the better, in the belief that competition will reduce transportation rates. They are not only allowed to locate their terminals wherever they can secure the cheapest property for the purpose, but they are permitted to reach these terminals by such routes as they please without regard to their

location with respect to other tracks which they may cross at grade, if the State laws permit, and the result is often such a condition as has grown up in Chicago, though usually on a much smaller scale. Occasionally the railroads are allowed to occupy the surface of existing streets as in Syracuse, but even if on their own rights-of-way, they are very likely to be carried across existing streets at grade, although in most states this is no longer permitted. Many of the states have enacted laws requiring new lines to be carried either over or under all streets which are in use, but rarely is any effort made to so locate the tracks, either with respect to lines or grades, as to provide for carrying streets which may be mapped but not yet built over or under the tracks at a minimum of expense and disturbance of the street plan. Railroads which are built through thinly settled districts which produce little business for them are obliged to keep their original construction cost down to the lowest possible figure and to provide for betterments from their future earnings, and this policy is often followed even with respect to the portions of their lines entering or passing through urban districts. This is all very reasonable from the railroad point of view, but it may be disastrous in its effect upon the city plan. In the densely populated countries of Europe, where the railway lines are relatively short and a larger capital expenditure for initial construction is justified, grade crossings are rarely permitted in either urban or rural districts, but the entire railroad right-of-way is enclosed so that access to the tracks is difficult or must be deliberate. There are exceptions to this rule, however, as in the city of Lincoln, England, where the principal street of the town crosses the railroad at grade in the real American fashion. As the city grows and its street traffic increases the dangers and delays incident to grade crossings of the railroads become intolerable and their elimination becomes necessary. The cost of this work is so great that many large cities put up with the inconvenience until the annual loss of life is so great that action can no longer be deferred.

“ At Pullman, for instance, two trunk line railways cross a street at grade about half a block from the main entrance to the Pullman works. Between two and three hundred trains a day, including the suburban service, pass over these tracks, two of which are through trains running at full speed across the street within a few minutes of 5:30 in the afternoon, which is the quitting time for 9,000 employees. It is said that in 22 months 41 fatal accidents occurred on these and other crossings in the vicinity and when the public realized the extent of the slaughter which was going on an agitation was begun which led to the adoption of an ordinance requiring the elevation of the tracks before the close of the year 1916.

“ A branch of the Long Island Railroad within the limits of New York City passes immediately alongside of several industrial plants employing a large number of men and women. The tracks are not fenced in and they cross the streets in the vicinity at grade, and the operatives at these plants have been in the habit of following the railroad right-of-way as a short-cut to the nearest street which will take them to and from their work. It is said that there have been on an average for some years past eight fatal accidents at this place, or about one every six weeks. Proceedings were commenced to eliminate all grade crossings on this portion of the railroad in such a manner as to prevent access to the railroad right-of-way but inasmuch as this improvement would necessitate the construction of a new bridge across Newton Creek on the line of Loral Hill Boulevard and as the city has not provided the funds required for this new bridge, no steps have yet been taken toward the elimination of the crossings.

“ The work of grade separation is often delayed until such a condition exists, and then either the railroad is compelled by the exercise of the police power of the State to elevate or depress its tracks or the work is undertaken and the cost is divided between the railroad company and the city while in many cases the State pays a portion of the expense. The laws governing the distribution of the cost of this work vary

greatly and the determination as to how it is to be divided is considered to be a function of the State and not of the municipality. In New York a newly constructed railroad is required to carry all existing streets or roads either over or under its tracks at its own expense, nor is it permitted to cross another railroad at grade. In the case of new streets which may be carried across an existing railroad the expense is divided equally between the railroad and the city, town or county. Where an existing grade crossing is to be eliminated one-half of the expense is imposed upon the railroad company, one-quarter upon the municipality or county and one-quarter is assumed by the State in view of the need of the work as an essential to public safety which is of State-wide concern. In all cases the manner of the crossing must be determined by the Public Service Commission, and plans for the work and contracts for its execution must be first submitted to and approved by the Commission, to which body must also be submitted to and approved by the Commission, to which body must also be submitted upon the completion of the work, full information as to all items entering into the cost, which cost is then apportioned by the Commission in accordance with the provisions of the statute."

Senator Thompson.— We will suspend now until 7:30.

NIGHT SESSION.

Evening session, June 26th, 1916.

Meeting called to order at 8 o'clock, Senator Thompson presiding.

Testimony of MR. LUTHER S. BEDFORD.

Examination by Mr. Frank B. Moss.

Q. How long have you been a resident of New York City, Mr. Bedford? A. Since August, '92.

Q. And you have always been in business as a printer, haven't you? A. Yes, sir.

Q. You have paid special attention to the traction questions in this city, have you not? A. Becoming interested in politics in '94, the question of municipal ownership was voted on. I was very much interested in that campaign and from that time on.

Q. From the time of the referendum down? A. Yes, sir.

Q. And what you have done in this matter, Mr. Bedford, all these years, has been done without the aid of anybody on the outside, politically or financially or otherwise. Isn't that so? A. Well, in my activities I have gone around and had some financial assistance.

Q. Well, as a publisher of papers, that was necessary? A. Yes, sir.

Q. You have published several papers? A. Yes, sir.

Q. And you published those in such a way that with a limited output you were able to put those papers where you thought they would do good in the particular exigencies that arose? A. For instance, public men throughout the city and nation, the United States Congress, the Legislature of the State and Assembly, the Governor, the Supreme Court, the Executive Committees of the various political parties in the city, taxpayers; such as those received almost everything that I printed.

Q. Having limited means, you had to put your printed matter where it would do the most good? A. Yes, sir.

Q. And a good deal was set up with you own hands, was it not? A. Yes, sir.

Q. You had a press of your own and worked at it at night? A. Yes, sir.

Q. Well, now, Mr. Bedford, as I understand it, the Committee is disposed to let you state your knowledge and observation of these matters in your own way.

Senator Thompson.—We would like to have the benefit of Mr. Bedford's expression on this matter as fully as he can give it to us.

Mr. Moss.—Yes, and I think I may say, Mr. Chairman, that

he may feel perfectly free to speak of anybody in any way he feels called upon.

Senator Thompson.— That is right, we want his story.

Senator Lawson.— You want to call spades spades. Don't go around the corner. Just give it to us as you understand it.

Mr. Moss.— You needn't spare anyone, or play any favorites. The value of this statement of yours will be that it is your free, unconstrained opinion, given in your own way. A. From the time at which I became an active player in the game, so to speak, the traction interests on the one side was trying to overcome the people's purposes in transit, as expressed in the referendum vote; and I on my side was trying to do what I believed to be the people's will. Before I printed anything, of course, I was an observer of events, dating back to the events following '94; but as an actual participant, my activities really began in '98, after which time the printing of circulars, etc., was practically continuous. And from that time till the time of the signing of the contracts there was a period of fifteen years. The traction trust seemed almost within reaching distance, of actually obtaining the subways, every two or three months, and I constantly resisted, and by publicity blocked their moves during that entire period. And if I hadn't thought that what I printed stopped them in these various attempts, I would not have continued my pamphlets.

Q. (Moss) You mean stopped them over a long period of time? A. Stopped them for that particular moment until they would make the attempt again, and as I can show here by the records I have, these attempts began within a few months, that is, the later attempts, began within a few months after the opening of the first subway; and the exhibit of my printed circulars here will show the various attempts during that entire period of years. Now, the transit law, as passed by the referendum vote, provided that none but operators of transit facilities then doing business in the city were eligible as contractors and lessees of the road to be built as I now remember it. Instead of there being an aloofness on the part of private capital to risk or to venture upon this traction field, as an actual fact it promised such enormous returns that

there were three elements in Wall Street that began a deadly war as to which should acquire the prospective road.

Senator Thompson.— When was this? A. Just following '94.

Q. (Moss) Prior to the original subway? A. Yes, sir. I now speak of events just previous to my becoming an actual player in the game. Those interests were what was known as the William C. Whitney syndicate or Metropolitan Traction interests; and then there was the Gould-Sage elevated road, and the Hart-Third Avenue surface road.

Q. At that time, Mr. Chairman, the Third Avenue Surface Railroad was a mighty power. It was an independent corporation. A. It was at that time reputed to be back of the Republican organization, supposed to be in close league with the Third Avenue. And the Gould-Sage interests had been the backers of Tammany Hall, controllers of Tammany Hall from the Tweed Ring and down; but with the rise of Whitney in the Metropolitan the political power passed from the elevated road to the Metropolitan Traction — the Whitney-Ryan-Widner-Elkins Syndicate. The rivalry between these interests to get this new subway (although the law provided construction should begin within thirty days after the passage of the law, the referendum) was the real reason why work was not begun. But that was a thing in itself — that rivalry — that had to be hidden from the public, and hence there was handed out even in those days the cry of the city having no resources, although there could have been no reason for the cry, because the law provided the money might be raised from time to time; so that, although the city might not have had one penny, the city could have begun construction at once, as the law provided the money might be raised from time to time. However, they soon raised this cry because this rivalry of interest kept any one from acquiring the road to be built, and this cry of city poverty was maintained throughout '94, '95, '96 and '97. That was known as the debt limit cry.

Senator Thompson.— What you mean by the debt limit cry is that within the constitutional limit of debt-incurring capacity of the city of New York, this work could not be done? A. Yes, and

I am pointing out that that was not true at any time, and that the real reason was Mr. Whitney wouldn't let Mr. Gould, and he wouldn't let Hart, and Mr. Hart and Mr. Gould wouldn't let Whitney get in, so the thing was tied up. In order to conceal what actually tied it up, city officials controlled by the Whitney Syndicate, handed out the story that the city had not resources, and this story was continued, and the people heard it throughout '96 and '97. In '97 was the election in which the first Mayor of the greater city was elected.

As I said before, the Whitney Syndicate had become the absolute power, so much so that the Tammany machine in Manhattan and the McLaughlin machine in Brooklyn were controlled by Whitney. Mr. Whitney wouldn't allow a Mayor and Comptroller both to come from the same city, so that these two antagonistic machines would be a curb upon each other. Hence, the Mayor was elected from New York and the Comptroller from Brooklyn. And the Comptroller and the Mayor and the Tammany machine and the Brooklyn organization remained antagonistic during the whole of their term of office, but both were dominated by Whitney, notwithstanding that antagonism.

Senator Lawson.— This was following Mr. Whitney's service as Secretary of the Navy, under President Cleveland. He came back up here and bored into these traction interests and took a controlling power in political matters. A. He had been acquiring power since the days of Jack Sharp and the time of which I am speaking, of course, was long after, during Cleveland's second presidential term.

Senator Lawson.— After he had ceased to be a Secretary of the Navy? A. Yes, sir. Whitney was in Cleveland's first cabinet. Now, in the latter part of '98, I got out my first paper, and a glance at that would refresh my memory. In that I discover that I then knew that the traction syndicate was making its subtle moves. I think it is unfair longer to designate this traction syndicate by the name of Whitney, because when he died, why the stream ran on forever, with just the same financial elements that continue to dominate New York politics. But in that day I had

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discovered that Mr. Whitney was the power behind the throne and that he controlled not only the two democratic machines in New York City that were antagonistic; but also the local Republican machine had been lost to the Third Avenue road, and the Whitney-Ryan Syndicate controlled it also.

In the issue of April 23, 1899, I find headlines here in my own paper, "To Steal the Tunnel, the True Cause of Crocker's Assault on Manhattan Elevated." That article goes on to outline and forecast everything as it subsequently occurred. The article went on to show how Whitney was attempting to beat down the value of the "L" with resolutions in the board of Aldermen, preventing use of turnstiles at stations, compelling increased trains service night and day, placing drip pans under the "L" throughout its entire length, prohibiting use of stations for sale merchandise, chewing gum, etc., questioning third track rights, prohibiting storage of cars on third tracks, and the Health Department was to condemn the whole structure, and especially the terminal was to be removed from the Battery. And the three-column article closed with the prediction that Whitney, Brady, et al. would at a future day own or control the "L" road, and that the Whitney Syndicate would own the tunnel. I could see the cards that were to be played very plainly at the time.

Mr. Anthony Brady was known in those days as an intimate associate of the Whitney Syndicate, and there was no real antagonism between Whitney and the B. R. T., and later the pretended rivalry was an invention. This article was in the Bryan Democrat of April 23, 1899. In those days I took stock in Mr. Bryan.

Q. (Moss.) You later changed the name of your paper to "The Politician?" A. The paper was started in 1899 or the first number was in October, 1898, for the purpose of keeping Bryan in the forefront as the radical leader in the Democratic party, and when I changed the name to "The Politicians" later on, it was for the purpose of combating this same traction interest in local elections — the Mayoralty election of 1901. I am trying to give you this information as hastily as I can, but I want to read here for just a minute.

Senator Thompson.—Take your time and give us an outline

as near as you can, and we will give you an opportunity to complete the details later, if you like. It is with that understanding you give the testimony, I think — that you may complete the details later. A. Yes, sir.

Q. (Moss.) You have mentioned the selection of Mayor from Manhattan and Comptroller from Brooklyn. It was supposed that Mr. Coler was very unfriendly to some of the Tammany schemes even before the Ramapo matter came out. Mr. Coler got a great deal of acclaim for the attitude that he took against Ramapo. Did that have any relation to subway matters? A. Yes, sir.

Q. Please state that. A. Now, as I was pointing out, in this rivalry of interests — the Belmonts at that time had no interest in traction of New York, indeed in any public utility, gas, electrical or any public utility whatever. I don't believe that the Belmonts had any interest at that time. They hadn't a dollar invested in any public service that I recall. Mr. Hearst had come to New York in '96 and had as an editorial writer, a man reputed to be in his confidence — Alfred Henry Lewis. About this time, Hearst had a break with Lewis, and Lewis was no longer in the employ of the Journal. Mr. O. H. P. Belmont was reputed to be at outs with his brother in a number of ways, politically and financially, and I believe socially and he started a paper called "The Verdict." In December, 1898, it seems that Mr. Belmont had foreseen that in the early part of 1899 preliminary moves would be made to grab the tunnel in the following year.

The Whitney Syndicate, having acquired absolute political power in every direction, had grown strong enough to seize its opportunity and get the tunnel. And they would then proceed to build. This paper, "The Verdict" seems to have been established for no other purpose than to hold up the Whitney-Ryan job, that the Belmonts might force them to a division of the spoil. The first cartoon on the first page of the first issue of the Verdict was an attack upon the Whitney Syndicate and there was an editorial in that same issue along that line. From that time on, practically the entire policy of the paper seemed to be an assault on the plan of the Whitney Syndicate in its effort to acquire the tunnel.

Q. That is, a Belmont interest, whatever it was? A. I am speaking of O. H. P. Belmont.

Q. Belmont attacked the Whitney Syndicate for what purpose? A. In view of subsequent events, it seems to me that the purpose was to show up the Whitney scheme to acquire the tunnel, and they did continue to show this thing up until the time arrived and if you will follow me, I think that I will fix the time at which the peace between these two interests was made. I will fix it within three days, and I will fix it in so closely that no amount of cross-questioning that you can do will shake the story, but will make it all the firmer. I will here cite some evidence that you can look at yourself. The second issue of "The Verdict," December 26, 1898, devoted almost all its space to an attack along this line. At the bottom on page 3 there is a charge made of great significance. I am quoting now from an editorial written by Alfred Henry Lewis in "The Verdict." That is written by a writer who has been an editorial writer for "The Journal" and a staff writer, and he was reputed to be in Hearst's confidence. I mean he was in Hearst's confidence at one time, but now with the Belmonts. He writes: "Of course, the influence that owns The Journal also owns some 11,000 shares of Metropolitan Traction which it took on at something like \$90.00 and which is now quoted at \$120.00 a share." I am afraid that figure is wrong. I have it here in another place. Well, if it is wrong I will correct it. Just let it go.

Now, attacks along this line and cartoons such as the one which you see here — there is Father Knickerbocker being pointed to a blazing sun of "Municipal Ownership of Gas," and with him is Whitney, who is just pulling a tunnel franchise from Father Knickerbocker's pocket. That is a cartoon from "The Verdict," of May 1, '99. Here is another from "The Verdict," of January 23, '99, representing Father Knickerbocker coming down the street and being held up by a group of highwaymen, the Metropolitan Traction. In the pocket of this highwayman is stuffed the "Journal." Cartoons similar to this, full pages and double pages, and editorials along this line advocating municipal ownership and operation of the subway and of all public utilities were constantly repeated in "The Verdict" from that time right straight along

throughout the whole of '99 up until about — sometime in August. Then a labor party had arisen in New York, and this labor party was threatening to endorse the Chicago platform, and a local political organization called the Chicago Platform Democracy was appealing to the national organization to recognize it as the regular Democracy of New York, for Tammany was ignoring or repudiating the platform of '96. Between these two — the radical democrats and the labor people — there was formed an alliance, and the attitude of "The Verdict" was to take charge of this political movement. And in the papers along about this time — in this hasty testimony I am testifying from memory, and I shouldn't be expected to be too accurate as to dates — but along about August 7th or 10th, somewhere along there (the last issue of "The Verdict" before the peace was made with the Whitney Syndicate) there was a terrific editorial in which they were appealing to organized labor and making the most tremendous demands for public ownership. And it was very evident that the Belmonts were in a position to seize upon this labor uprising, and it was apparent that if they did, Mr. Whitney would have faced defeat at the coming election. Croker had suddenly returned from Europe on August 12th, declaiming for Bryan — a complete reversal of his previous position. This flop of Croker was evidently due to the dictation of Mr. Whitney. Mr. Whitney landed three days before Croker. Mr. Whitney had evidently instructed his associate Ryan to save the national situation, but Ryan had failed, and both Whitney and Croker had suddenly returned, and made this Bryan move, but locally the coming election would still be threatened by this labor revolt had the Belmonts obtained control of it, and it is very evident that between this day, the 12th day of August, 1899, and the 15th day of August, 1899, the peace was finally made between the Whitney and the Belmont interests.

Q. I see, Mr. Bedford, you have the idea that even as powerful a man as Croker was — A. As powerful a man as Croker was! As an actual fact the interview in which Croker flopped to Bryan was probably written by Mr. Whitney in collaboration with Mr. Arthur Brisbane — Hearst himself, or some high edi-

torial writer of the Journal, and was awaiting Croker's arrival here to have his sanction for the alleged "interview."

Q. It had been maintained by some authorities on politics that the real control of the dominant parties has always been at some office on Wall Street and that the party leaders said to be the brutal strength amassed voters behind the policies dictated by some financiers. Have you ever had that opinion? A. No other opinion possible. No other opinion is really possible to any who understands what goes on. I am sorry that I am getting off on this tangent, because it isn't the essential thing that I want to uncover.

Q. That's all right, but I want you to show how this warfare that was conducted in "The Verdict" came out. A. I am just pointing out a few things here. This is very confusing to me. You see that was a good many years ago, and I am reciting from memory without any reference to my data; but I fix those dates, and I wouldn't want to elaborate on that at all.

I have a little memorandum I made out several years ago of some events. On Wednesday, August 2, Gould sailed for Europe to meet Whitney. Newspaper stories showed that Whitney sailed for America on that same night. Something very remarkable had happened in New York, and it was very evident that Mr. Whitney sailed suddenly to come back here on the night of August 2, at midnight (that was the morning of August 3), and on August 6th Croker sailed from Europe, although he had been announced to sail on the 18th — I remember that, that he sailed ahead of time. Now, Mr. Whitney had suddenly caught the boat and told Croker to get the first boat following.

The situation was so acute and the danger so great of this uprising of organized labor and the Chicago Platform democracy that it seemed that Whitney, landing three days ahead of Croker, must have had the Croker interview prepared in advance. As the interview was set up in large type, I as a printer, am sure that it was set up by hand, and was in type at the time that Croker landed, because it came out that afternoon, and he only landed at 10 o'clock in the forenoon, and it could hardly have been set up in time for the afternoon paper, especially by hand. Croker would not have known of the necessity of his flop to Bryan, as shown by the Creelman interview, alleged to have been written on

the boat; and Creelman would not have prepared it after his arrival in time for the afternoon paper to be put in type set by hand. It seems to me that Mr. Whitney and Mr. Brisbane must have prepared that interview and had it standing in type, and that Croker merely assented to it as he came up the bay. No other newspaper discovered that he had turned for Bryan. I have the clippings at home — newspaper stories of the time, and I examined all the newspapers in the city to find if any other paper than The Journal knew that Croker had flopped for Bryan, and they didn't.

Now, the next day's Journal was Sunday's, and there was a long editorial in it in which The Journal nominated Whitney for President. Whitney had been compelled to save his hold on the Democratic party nationally and himself from defeat locally by having Croker declare for Bryan so as to let Tammany into the National Council; then he covered his tracks instantly by having The Journal announce him (Whitney) for the presidency.

Now, on August 16th the first rumblings of the Ramapo scandal were heard. And here is the way that seems to me to have been invented and the purpose for which it was invented. I don't maintain the theory that there was no Ramapo Water Company — there was, but it was only in embryo. I assume that Mr. Whitney must have gone to somebody and told him to instigate an application to be made for a contract with the city to supply water, and that from that application a scandal would arise — a scandal of any proportions that he (Whitney) might desire. You could put the figure for so many years at so much per year and make it a round sum of \$200,000,000; or you might make it \$100,000,000 upon some other basis; but \$200,000,000 was probably fixed in Mr. Whitney's mind as about the size of the scandal that they wanted to have to cover up the peace that was to be established between the parties interested and distract attention, while they got away with this tunnel job, because the men who were to deliver the tunnel must be men who stand before the public as heroes. The Ramapo contract was presented. Mr. Coler stood there and hit it in the head with a club and stopped the steal.

Then The Journal began to work up a tremendous sensation. It created a great Vigilance Committee, and after that they got all

the people in town on that committee. Suddenly they put at the head of that committee Whitney, who was to preside at the mass meeting to be held at Cooper Union to stop or block this Ramapo deal. In the meantime Coler of Brooklyn, was being brought to the front, and the Manhattan crowd, who was supposed to be responsible for the Ramapo deal, was being relegated to the rear. But the peculiar service which the Ramapo meeting was to be put to was not only to kill the straw man they had created but was to discover that the city had ample funds for its water supply and for rapid transit too; and then there Mr. Coler discovered ample funds. The debt limit cry was abandoned that night by the Comptroller at the Ramapo meeting. Why? Because evidently the peace had been established between the financial interests; and they were making arrangements that the subway steal was to advance.

Q: (Moss) Well, what was the outcome — what was the next thing that appeared? At least, what was the evidence of peace that was established? A. At that Ramapo meeting Mr. Coler announced that if the city's finances were properly conserved —

Q. You say up to that time there had been an attack upon the city's financial ability to construct the tunnels? A. Mr. Coler and everybody else had maintained the debt limit cry until that night. That night Mr. Coler made a speech in which he used practically these words: "If the city's resources are properly conserved, I believe the city has not only money for water but for rapid transit, too."

I have come across, here, the editorial which I believe was the last savage attack that the Belmonts made upon the Whitney scheme to get the tunnel.

Q. What was the date of that editorial? A. From "The Verdict" of August 14th. I believe it was the very next day that the peace was made.

Q. What was the day of the meeting of this gathering at Cooper Union — the Ramapo meeting? A. These events were following each other — Croker's flop to Bryan Saturday, August 12; Sunday, August 13th the Journal editorial nominating Whitney for President; Monday, August 14, The Verdict's desperate attack, Belmont seemingly trying to undermine Whitney with Croker, and

trying to come into possession of the Democratic party, and at the same time threatening this labor revolt. And it seems to me the Belmonts won, and it have been impolitic then to crow; but a year later, in the last issue of *The Verdict* appeared the following: "With this issue *The Verdict* ends its existence. For this it has neither apology to make, nor explanation to offer."

Q. What was the date of that? A. That was November 18, 1900. They had simply held Whitney up, and they stripped him and then said, "Now, go to hell!" That's precisely the tone of this valedictory.

Senator Thompson.—What was this—the day when peace was made? A. Now, my theory is that peace was made between the Belmonts and the Whitney Syndicate on August the 15th, because the Ramapo scandal was invented or noised abroad on the 16th. That was in 1899.

Now I think I can explain Ramapo. A water company, as I started out to explain before, was in embryo; and therefore Whitney knew that he could manufacture a scandal of any proportions at all. He could simply instigate an attempted contract for twenty years. It could have been a contract for twenty years, or for ten years, or for any number of years, at so much per year, and they could manufacture a scandal of any proportions. I have some notes here that may prove highly entertaining. I made a note there that on Tuesday, August 15th that Ramapo scandal was invented, and Coler "incidentally heard of it late that night." Wednesday, August 16th, blocked the big steal. Croker immediately disappears, and is by innuendo brought into disgrace by the *Journal*. Whitney, to save himself nationally, had compelled Croker to declare for Bryan, and a double purpose was now served by disgracing Croker.

To indicate now how the *Journal* worked this Ramapo scandal up, on Friday, August 16th, three and a half columns, and an editorial three columns wide, nearly the length of the page, appeared. The editorial shows that Coler was praised and made a man of presidential size. Now there is a whole lot of information here that I don't think it important to include just in this place.

On Saturday, August 19th, it is stated that the gas war is near

its end. "Rumor has it that the Russell Sage has surrendered." (You will remember that Gould had sailed to Europe to meet Whitney but Whitney had suddenly departed for New York.) Five columns of Ramapo, and a large editorial — Sunday, August 20, Croker vanishes. They are driving Croker further and further into disgrace and bringing him in as responsible for the Ramapo scandal. Monday, August 21, '99, Croker is still chasing around the country in disgrace. On the 22d five columns of Ramapo, two big editorials and some stuff about Grout. "Mr. Grout knows more about the inside of the Ramapo scheme than any other man on the Board of Public Improvements. The hearing on the contract was fixed when he was in Europe and the plotters hoped to get the scheme through before he returned." They were making a big giant out of Grout who was later to put over some of the devilish work, so he was here being pushed forward by The Journal at the same time with Coler. Secret agents of Grout and Coler set to work to prove that Croker had knowledge of the projected Ramapo steal. These agents reported the apposite conclusion, for Croker knew no more of the straw man than did Coler. Wednesday, August 23d, Ramapo had six columns on the first page and two editorials. "Whalen had always been an advocate of municipal ownership," etc., etc. If the circumstances were different and I had plenty of time you would be amazed at what was brought out here by The Journal showing the established relations between Whitney, the Whitney Syndicate and Mr. Hearst. For instance, this editorial here on "the contract bears no date" — that contract itself seems an invented thing, and the men who were creating and killing this straw man were the guilty and innocent dupes of Hearst and Whitney. When they had forged up their little straw man they failed to make it even the imitation of a man, and Whalen was as much in the dark as was Coler.

Thursday, August 24, The Journal organizes its Vigilance Committee. O'Brien and Parsons were on it. Now, there's a wonderful thing. O'Brien and Parsons were the two leading men that had that labor party going, you know.

Senator Lawson.— What Parsons was that? A. Head of the K. of L. and later the Postmaster of Yonkers, I believe.

Senator Thompson.— Who was O'Brien? A. This O'Brien afterwards became the sheriff of New York County.

Thursday, August 24th — we have that date — and Hill was engaged as counsel. Ramapo occupies whole of first and second pages. Now, just look at the sensation they were working up. "Journal forms Citizens Vigilance Committee to Destroy the \$200,000,000 Conspiracy Steal." A heading across the whole first page. There is an editorial on Ramapo and another on Coler.

Friday, August 25th, The Journal sued to disfranchise the Ramapo Company. Here is the great vigilance mass meeting at Cooper Union across the first page. The Journal fixes August 30th as the date to hold the big meeting. There is an editorial half of three columns. There is also a big cartoon. The paper was practically given over to this scandal. "Richard Croker Guarded by Dogs," was the headline. Nobody could see him. He was driven into absolute disgrace. That was the contemptuous fashion in which Croker was treated at this time.

"Scared by Journal's Suit, Ramapo sends a Representative to Albany for Aid," that's the heading of Saturday, August 26th. The first and second pages were given to Ramapo. Whitney telegraphs from Roslyn, L. I., his pleasure at being given an opportunity to join the Vigilance Committee of The Journal, and his picture is the center of a group of reformers on the first page.

Sunday, August 27th, there is one page of Ramapo. Whitney is made Chairman, not elected by the Committee or appointed by anybody, but just thrust there. Coler has a special article in the editorial section entitled "Defects of the Government of Greater New York." The editorial booms Coler "for a higher station."

Monday, August 28th, there are eight columns of Ramapo stuff, four on first page. No editorial; no news of Croker.

Tuesday, August 28th, The Journal has whole of third page and an editorial on Ramapo. The headline reads: "Croker in charge; Croker takes the helm again today." The last paragraph of the above heading reads: "Croker disappeared yesterday."

Wednesday, August 30th, The Journal gives the first page and half of the second to Ramapo. Headlines across the first page in red reads: "Attend tonight's mass meeting; New York Citizens

now take concerted action; Tammany's Leaders Fail to Denounce the Steal." Under the picture of Coler are the headlines: "What is the matter with Tammany?" There is an editorial attack on Whalen who drew the contract of his own volition, or at the suggestion of those who were plotting to rob the city of \$200,000.000.

Senator Thompson.— Well, what happened to all this Ramapo business? A. It will be disclosed in a moment. The account of the Vigilance Committee of the Ramapo meeting filled the first, second and third pages of *The Journal*. Whitney did not show up, Joseph Johnson, Jr., introduced Mr. Sterne as Chairman. Geo. Doan Russell was made Secretary. Sterne, Russell, Parsons, Adams, Moss, Fulton and Coler addressed the meeting.

Now here is the most remarkable thing. The reason Mr. Whitney didn't show up was because your honorable servant showed up with a circular I have here in this paer. I was afraid they would get wise to me, and so I had some one else go through the audience with the circulars. As a result, Mr. Whitney didn't show up.

Senator Lawson.— Was that your circular? A. That was mine, and I have it here in this paper.

Senator Lawson.— Let me look at that paper. (Senator Lawson is shown the paper.) A. Now, everybody was taken in — I mean the men whom Whitney used to hold the meeting. It is my firm conviction that there wasn't anybody who understood what was going on there. I doubt if Coler knew at the time that he was killing a straw man. I doubt when Whalen drew the contract if he knew that he was making a contract to be killed.

Did Hearst know? Oh, yes, of this I am perfectly certain; but even so astute a politician as Hill did not know. Hill was employed by Hearst. Hearst did not attend the meeting — he knew what he was doing.

Senator Thompson.— What became of that? A. I want to explain. Mr. Hill was employed as counsel to go up and attack the Ramapo Corporation itself. He was employed by Hearst. Now, Hill was politically affiliated with Whitney and was favorable to the King's County machine, and he was the political sponsor for Coler to McLaughlin. He was employed by Hearst to legally attack the corporation that was attempting this steal, and he wasn't

in on the fact that he was fighting a straw man, as the telegram that he sent to the Committee that night shows. Hill's telegram follows:

"Albany, N. Y., August 30, 1899. The legal proceedings here to-day before the Attorney General demonstrated *prima facie* that the Ramapo Corporation is largely a mere shadow, without substance, assets, responsibility or lawful existence."

They had taken an egg actually that hadn't been laid, and they had created this monster — the Ramapo's Scandal Snake — and they would create a hero to stand there and kill it; let Mr. Coler be in the position of a public benefactor; and he would discover ample money to build the subway.

Q. (Moss.) Now, Mr. Hill's position was that the company was a failure; that was the general belief — that it was being used to allow politicians to get this great water contract which would be running over a long period of years. This would draw a big sum of money out of the city. That was the general theory and that is the theory that that Hill expressed? A. You see, the theory that I am constructing here — and it holds together — is that the company wasn't in proper form to do anything at all. It had been set on while still in embryo to make the application so that Coler would be in a position to kill it.

Senator Thompson.— Well, did he kill it? A. The thing wasn't allowed to get by, of course. It was created for the purpose of being killed. Of course he killed it. A boy could have killed it.

Senator Thompson.— Then what happened after they killed that? What did they do then? A. We will finish the telegram.

"The facts developed cannot well be changed at any subsequent hearing. I am confident that the rights and interests of the citizens and taxpayers of New York will be fully protected in the final result.

"DAVID B. HILL."

At the meeting that night, Coler in his speech told how he succeeded ninety-five treasurers upon the consolidation of the greater city. He said:

"We were under an overwhelming mass of obligations which seemed to have no end, and it was not until the first of July, this year, that the city came to have a margin for new improvements.

"Without going into long details of the city's financial condition, which you will all read in the reports which will be in the morning papers, I wish to say, and I am willing to stake my reputation and my office upon it, that THE CITY OF NEW YORK, IF ITS FINANCES ARE PROPERLY ADMINISTARTED AND IF THERE ARE NO UNDUE EXTRAVAGANCES IN ANY DIRECTION, NOT ALONE HAS MONEY ENOUGH TO OWN ITS WATERWORKS, BUT IT HAS MONEY ENOUGH FOR RAPID TRANSIT BESIDES. (Loud Applause.) I have no feelings of compunction in standing here to-night upon the broad principle of municipal ownership of franchises. (Applause.) And if any party or organization that has elected me takes a position different from that, it is not me, but the organization that elected me that is untrue to the trust. (Applause.) Just one moment about the Ramapo job itself; *I heard of it only a day or two before the meeting.* Commissioner Shea had a better idea of what was going to turn up than I did, and he managed to post me pretty well on the subject, and we were both there," etc., etc.

The Board of the Public Improvement had held a meeting during the day and the rapid transit steal was already foreshadowed. There isn't a line of stuff that I have here but what is in perfect keeping with the theory that I am advancing, that the thing was purely an invention.

Q. (Moss.) Now, we have got that. A. We find the man who is at the head of it is Whitney. We find that Mr. Whitney is at the head of Coler and of Croker and of Whalen and of Hearst and of everybody concerned. He is the boss. We find that upon the evidence. Now, there's a man attacking him — the Belmonts — and these attacks ceased at this time, at the time of the Ramapo scandal which was invented immediately after the last Belmont attack!

Ramapo becomes a cover for the job that will then be put

through, and at the very meeting gotten up to denounce Ramapo we find that the city is ready to start along with this tunnel proposition — the debt limit cry was abandoned. These violent attacks that really exposed the Whitney-Hearst game had ceased.

Q. (Moss.) Do the Belmonts come right in then? A. No, you have to await that development. They are not quite so crude as that. There is a little finesse about public robbing and they had to build up Coler who was to deliver the goods. One of the editorials the next day is headed: "The Right Platform and the Right Leader" — that was Coler. There is also a communication from Coler, with his picture in the center, on the water supply.

I will just state that on Saturday, September 2d, two days after the mass meeting, there was a cartoon relating to municipal ownership of all public utilities. It was entitled "Good Cometh Forth from Evil." The very title of the cartoon as well as the illustration credits the Ramapo Water Tank as being the birthplace of the tunnel, and it was the truth. "The Board of Public Improvements Has Declared For Municipal Ownership of All Public Utilities." Ramapo fills but three columns. "Whalen for Judge, a public insult" is an editorial. Now, they proceed to disgrace Whalen who had drawn the contract and they make a god out of Coler who had killed the contract.

On Sunday, the third, there is a long article, "David B. Hill Oiling up the Old Machine." I remember the article distinctly. It is booming Coler. Croker vanished suddenly again. This time, he has carefully lost himself in the Adirondacks and another report has it that Croker has gone to see Whitney. Ramapo at this time has simmered down to one column only.

Now during all the time that the subway proposition had been held up, Coler had refused to approve the form of the contract.

Q. (Moss.) He was Corporation Counsel? A. He had refused to approve the form of contract and Coler had held the debt limit cry because neither one nor the other could take upon himself the sole responsibility of holding up the subway construction, so each had to be in a position to be able to share the blame with the other, and when Coler finds the city has ample resources, Mr. Whalen withdraws his objection to the form of contract and the subway steal may proceed! They are both now ready to let the subway job go along. The Whitney and the Belmont interests

had evidently made the peace. Ramapo was now only a one-column wonder, while Rapid Transit takes the center of the Journal stage in head lines: "Whalen Bows to City Transit Need — Willing to Approve the Commissions Contract Submitted in 1897 — Money Now in Sight," and the article goes on wonderfully corroborating the explanation I am offering.

The Ramapo scandal had now begun to assume small proportions and over half of the first page of the issue of September 5th is under the head line: "Now is the Time for the People to Build Their Own Tunnel for Rapid Transit."

Q. What is the date of that? A. That's September 4th. The Ramapo scandal was a matter now of three days past. They had forgotten it. "At last the Plan So Long Advocated by the Journal Can Be Carried Out Without Delay — Comptroller Coler Says the Time Is Ripe — Mr. Whalen Agrees and Calls a Conference." All that is a head line. The Journal reproduces some of its stuff from last April and claims the credit for the rapid transit to be "built and owned" by the people. A sub-heading reads: "Enormous Revenue in the Municipal Tunnel." You see everything is ready for the tunnel job to proceed. Ramapo is now down to half a column. Croker is still a sneak.

Q. That brings you down to September, 1899, doesn't it? A. Yes.

Q. Now, we find Belmont buying the City Island Railroad in the early part of 1901. How bridge the time from 1899 to 1901? Bridge the time. Do you remember the day that he bought that City Island Railroad? A. I can't give it to you to the day. It was in the early part of 1901. Of course, I wouldn't have anticipated your question, and I haven't the clipping with me here.

Q. By the way, you haven't yet shown Mr. Belmont's advent into the subway business. Where do you get that? A. What I have shown here is that under the cloak of the Ramapo scandal the preparations for this tunnel job were made ready and examination of the files of the "Verdict" will show that the character of the attack that was aimed at the job let up, but the attacks upon Whitney did not cease. They would have had to be kept up even as a part of their own game, *but the attack on the Whitney game to get the tunnel ceased.*

Q. Well, now, we want to show the advent of Belmont into the tunnel business and how he got the contract from McDonald.

Senator Thompson.—Now, I will tell you what I think we will do about this matter. It is half-past nine, and we can take this matter up again to-morrow morning and let you finish it. A. I will tell you, Mr. Counsel, my story as I have presented it here isn't half such a story as I could present. You see I have been taken unaware.

Senator Thompson.—It is a sort of historical matter with us, and I didn't realize you would be able to go so much into detail as you have. If you can stop and start again to-morrow morning, I will adjourn until to-morrow morning at eleven, and we can take the matter up right there if you want to do that. A. I'll tell you what I would much rather do. I would much rather finish the story alone. I hope you catch my point of view.

Senator Thompson.—I do. I see what you are after. A. I don't give a snap of my finger about this story. This is only preliminary to showing the plot of the subway job that then grew out, and that all later things are a mere development of it. A mere resume is all that I wish to make here to-night at all. I care nothing about this original job except that it becomes the primary basis from which every other thing becomes a necessary consequence. Now, if you could follow me, I would—inside of five minutes—sketch the most tremendous events so that both your time and my time would be saved.

Senator Thompson.—Well, do that. A. I will just hastily sketch here a part of what I will go on with and elaborate later on, along the line of question and answer that I have already prepared in part for Mr. Moss. I want to show that after the opening of the first subway, after this job I have been describing had been consummated, and the Belmonts were, as I claim, simply in on the job; they were the fiscal agents, the greater part of the loot must have been retained in the hands of the political power. That they blocked the Whitney syndicate and themselves got the goods, while Whitney continued the political power is absurd; that seems to me an unconceivable thing, and so soon after the present subway

was opened, they began plotting for its extension and I want to show you how the attempt was made in March, 1905, and I will produce the circulars with the record of public agitation I raised at that time to stop the furtherance of the job, and how I got up a meeting at the time of the subway strike of 1905; how I appealed to organized labor and they authorized a meeting to denounce the attempt to pull off the subway steal at that time, and why that meeting was never held. The labor leaders were bribed not to hold the meeting; and another meeting was held instead to denounce the Rapid Transit Commission for not giving a franchise to the Pennsylvania Railroad, and to demand that the franchise power be stripped from the Board of Aldermen. Testimony afterwards brought out in the Ivins Investigation of 1907 showed these labor leaders were paid for holding that mass meeting, but Ivins entirely suppressed the fact that the real mass meeting authorized was never held — has not been held to this day. Then in May, 1905, the Rapid Transit Commission approved or is alleged to have approved, the nineteen routes which may be said to have been simply two great trunk lines on Manhattan Island, the seventeen others being merely feeders. These routes which they were trying, and from that time tried, to get hold of ever after, were approved on the 14th of May, 1905. The moves made to block the progress of the steal, which then seemed on the very eve of being consummated, are recorded in the newspaper stories and my circulars which I will produce. Then there is the passage of these routes by the Board of Estimate at its last meeting in July, of 1905, and how the continued agitation upon my part in distributing circulars to the Supreme Court and all public people kept the job halted up until September of 1905, just before the election.

Again the job was just about to be consummated when I got out a paper, a copy of which I have here with me. Now this paper stopped the job from getting through at that time, September, 1905. I am going to take a second to read just one headline from the New York Times of September 1st, 1905: "New Subways Under Way Within Six Months." This kind of headlines ran on for fifteen years, and every time they had their hands on the goods, I got out some literature like this circular and blocked them

again, sending it to Congress, Senate, State Legislature, Newspapers and public men and scandalizing each successive attempt.

I am hastening over this in order to get away from here, but I want to recount how on November 30, 1906, the Rapid Transit Commission resolved not to take advantage of the Elberg Law, but to lease proposed new roads to the contractors; how Tyho Union No. 6 authorized a meeting on December 2d and compelled a complete reversal of their position by the officials on a resolution offered by Comptroller Metz in the Board of Estimate on December 7th, 1906.

Senator Thompson.— Well, we don't have to go into those details now, you know. Your idea is to — A. To show this conspiracy right up until its final consummation.

Senator Thompson.— As I see it, the difficulty was that when the public sentiment was ripe to allow the city to build and run the subways themselves, the debt limit was said to be in the way, and when the debt limit was said to be ripe to allow the private enterprise to have its own way, the debt limit did not stand at all. In other words, the cry was held to prevent subway construction when private sources were not in shape to do what they wanted to do. When they got in shape, then the debt limit never did interfere. The consequence is that the Comptroller's office was always the king-pin of the situation, and that the Comptroller's office always could be used and always was used to bring the tidings to the public as to the condition of the debt limit. Is that the correct situation? A. Yes, sir.

Senator Thompson.— Now, assuming that you will carry that story out, I think I understand the situation. You carry that story out. You can do it between now and the first of August, any way. You can take your time. I understand your situation. Your story will be invaluable to the Committee, because it gives the story in your own way. As I understand, you have practically given this matter your entire attention from the time it started, right down to now. A. Yes, sir. Eighteen years.

Senator Thompson.— Now, if that is agreeable, and if Mr. Bedford will do that, we will continue the story right from here. You put what you wish to say down, Mr. Bedford, and we will run

it into the record. The understanding is that the remainder of this story goes into the record in typewritten form. We will turn the Committee's stenographer over to Mr. Bedford if he desires. We will suspend now until to-morrow morning.

Adjournment.

JUNE 27, 1916.

MUNICIPAL BUILDING, NEW YORK.

Morning session Tuesday, June 27, 1916.

Meeting convened at 11 o'clock, Senator Thompson, presiding.

Mr. Moss.—In connection with the Long Acre Company matter I wish to read in evidence the Thirteenth Finding of Facts in the decision in the case of the Metropolitan Trust Company of the City of New York against the Long Acre Electric Light and Power Company, Empire Trust Company et al., which decision was signed by Samuel Greenbaum, Justice of the Supreme Court, dated New York City, February 16, 1914.

“Thirteenth: The New York Edison Company has since 1908 been hostile to the defendant and has endeavored to embarrass and keep defendant from transacting its business. The purchase of the outstanding bonds and coupons of said defendant, the attempt to call due the principal of said bonds, and the bringing of this action were done with a hostile intent and were all parts of a scheme of the New York Edison Company to injure the said defendant Long Acre Electric Light & Power Company. If any default in the payment of interest exists, the same was partially contributed to or wholly caused by the New York Edison Company.”

I wish to read in evidence on the conditions relating to the Public Service Commission, a letter from County Judge Robert H. Roy, dated April 19, 1916, at the County Court Chambers, Kings County, Brooklyn, New York, as follows:

“My dear Mr. Moss:

“This is in reply to your letter of the 17th inst.

“The question to which you refer is somewhat ancient

history; it occurred shortly before Judge McCall was appointed on the Public Service Commission, although it had no reference whatever to him.

"There was then in existence in Brooklyn, a self-constituted body called the Brooklyn Rapid Transit Conference. I was made a member of that Conference by somebody. I never knew how or why I was appointed. The Conference held luncheons at the Hotel Bossert once a week. I attended only one of these.

"At that time there was a vacancy in the Public Service Commission, and the name of Mr. Riggs, formerly of the New York Sun, was being prominently mentioned as a likely appointee. At the luncheon the question arose whether the members of the Conference ought to take any action, and there was a discussion in which everybody present in turn was asked to take part. The Conference was made up of real estate agents and a few prominent men.

"During the discussion there were many present who seemed to think that the statement which had been made concerning Mr. Riggs, that he would represent the Brooklyn Rapid Transit on the Public Service Commission, was not an objection to him, because inasmuch as the Interborough was being cared for by some of the then present members of the Commission, it was only right that the Brooklyn Rapid Transit should have a representative.

"When it came my turn to speak, I told the gentlemen I did not suppose that what they thought or I thought at that meeting would influence public sentiment on the subject, but that I could not patiently listen to such sentiments, and thought it was about time that consideration was given to having the public represented on the Commission rather than the railroad companies. .

"That ended my relations to the conference. I never attended another meeting, for I was satisfied that those members who were not friendly to the Brooklyn Rapid Transit were utterly incapable of dealing with the subject, and I had no desire to ally myself with the other men, whose interests were so closely connected with the interests of the railroad

companies, that they considered the interests of the public to be secondary.

"As I stated, this is rather ancient history, because the personnel of the Public Service Commission has entirely changed since that time."

I will also read this letter which was sent by Jerome C. Cook, who has an office on Forty-second Street, but can't be reached by subpoena, to Senator Thompson, dated March 25, 1916:

"Some years ago, shortly before the contracts for building the subway were signed, there was a meeting at the National Arts Club held to tell the members something about what was being done for transit and what the Public Service Commission was for. There were present as speakers among others Mr. Place of the New York Central, another railroad vice-president and several members of the Public Service Commission (Mr. Willcox is the only one I remember by name) and Mr. McAdoo of the Hudson Tubes.

"Willcox tried to tell us what the Public Service Commission had done for the citizens. The two points that have remained in my mind as especially dwelt upon by him was the promise of the B. R. T. to stop the rattling of windows in some of the cars and to remedy some flat wheels.

"Then Mr. McAdoo spoke. He told us what his offer was to the city; said he had had no answer on his bid although it had been before the committee for some time and the time limit was almost up. That he knew when he submitted his bid he had no chance no matter what terms he offered and then turning to the members of the Commission present said: 'I challenge you gentlemen to say here and now that it is not all cut and dried to turn the building of the new subways over to the Interboro'. The members of the Commission simply grinned and neither then or later denied the charge or commented on it in any way."

I read in evidence a letter signed by W. R. Willcox, on the paper of the Public Service Commission, dated June 10, 1910, addressed to Hon. William J. Gaynor, Mayor, City of New York. City Hall, New York:

"Confirming our oral understanding, I have arranged for a joint conference on Friday, June 17th at 3 P. M. at this office between the Transit Committee of the Board of Estimate and Apportionment and a committee of the directors of the Brooklyn Rapid Transit Company, and the members of the Public Service Commission to consider the general question of enlargement of the facilities of certain companies of the Brooklyn Rapid Transit system.

"I am informed that the committee from the Board of Directors of the company consists of Messrs. Anthony N. Brady, Walter G. Oakman and T. S. Williams."

ERNEST C. MOORE, having been duly sworn, testified as follows:

Mr. Klein.—Mr. Moore, you are an engineer? A. Yes, sir.

Q. (By Mr. Klein) did you bid for the construction of ducts for the new subway? A. I bid on the construction of the ducts at 44th Street for the Queensboro subway.

Q. What were the specifications for the contract as you recall them? A. Well, I don't recall the entire specifications, but it required the construction of a duct line in 44th Street, running from Lexington Avenue to First Avenue and down First Avenue to 42d Street and through the 42d Street shaft of the Queensboro column.

Mr. Moss.—What kind of ducts? A. They were ducts for carrying power for the Queensboro subway.

Q. (By Mr. Klein) Those ducts were separated from the subway structure itself, were they not? A. Yes.

Q. When did you bid on the contract? A. I think it was August 4, 1915.

Q. When was the contract awarded? A. September 10, 1915.

Q. The Public Service Commission awarded the contract on that date? A. Yes.

Q. Could you proceed with your construction at that time or soon thereafter? A. No, I could not.

Q. What was the reason? A. The contract had to be approved by the Board of Estimate.

Q. Was it approved? A. It was not.

Q. At no time? A. I have no knowledge of its having been approved at all directly. I understand that it was approved at some meeting very recently.

Q. How long did you wait to hear of the approval of the contract? A. About nine months.

Q. And during that time you were unable to begin any construction work? A. I was.

Q. Why was the approval of the contract delayed by the Board of Estimate? A. There was an argument between the Bureau of Contract Supervision and the Public Service Commission as to whether the expense of this construction should be charged to equipment or construction of the subway system.

Q. What did the Public Service Commission say? That it should be charged to equipment? A. They said it should be charged to construction.

Q. What was the decision of the Board of Estimate in the matter? A. They decided that it was equipment.

Q. What is the difference between the two terms so far as affecting Contract No. 3, under which this was a part? A. Under the contract for construction the payment is made, as I understand it, by the City, for which they issue corporate stock, as authorized by the Board of Estimate. If it is equipment, the same is let and paid for directly by the railroad company.

Q. Then that involved a large question so far as the construction of the subway and the ducts is concerned? A. Yes.

Senator Thompson.—Now we have been having some difficulty for the last two or three days in the matter that came up at the City Hall.

Three days ago the Committee sent to the City Hall for certain correspondence. We were unable to find it. The correspondence became materially involved in relation to the Controller's office of the City of New York and the matter came up after the examination of the Controller on the stand. As I explained the other day, this was not a matter of figures, but it was a matter for investigating a person who has the ability to find certain papers that in an investigation of this kind you might want. We had made certain examinations of these files and the time has gone

by, so that when I asked for those papers why I asked for them through that channel, but we were not able to find them. Then I asked Mr. Moss to take Mr. Klein with him and go over there for the papers, which he did. The Mayor refused to permit Mr. Klein to go into the records. Now I am afraid that that action on the part of the Mayor will have defeated the result of this investigation. That I regard as highly unpardonable. The question as to what we find through the public records is the most important function of this Committee. The question as to the trustworthiness of one of our assistants is of course important, but it is a personal matter.

The course that we have taken in the last two or three days has been because of the greater and more important question involved, and I was afraid that because of the delay in our obtaining the information that we might lose the benefit of it, and the indications were given exactly, so that it became known as to what we were there for. The information had to do originally with some of the activities of an employee in the office of the Controller by the name of Charles O'Malley, and he has charge, I am told, of real estate transactions, where real estate is taken by the City and sums of money are awarded by the City to the owners of the real estate for it. It is a confidential position in the Controller's office I am told.

Not until this morning, through this delay, were we able to get the record that we desired in the City Hall, and I am informed that we have it.

On issuing a subpoena to Charles O'Malley, we find that he is not in town, and nobody in the Controller's office has any information that he will give us in regard to his whereabouts. They say he is on his vacation; that he will not return until Monday or thereafter. They say that he has not had a vacation for a long time and therefore they don't know when he will return. The fact that this Committee intends to adjourn on Saturday, and the fact that this vacation ends on Monday are two facts that the Committee might take into consideration, as to whether or not the vacation is taken timely by this particular man within the last few days after we began to look into this matter.

It is a serious handicap in making this investigation now, and

it is a very serious matter that this particular Mr. O'Malley should have so suddenly go on his vacation, and also that he keeps the whereabouts of his pleasure grounds so little known.

Now there are certain records — I don't know whether they can be of use to us — which we must get, and you had better ask who in the Controller's office has charge of those affairs in Mr. O'Malley's absence. And if Mr. O'Malley, as a public officer, has any regard for his duty as a public officer to the people who employ him, he will postpone his vacation and return at once.

Now in reference to the fundamental fact which has disturbed the Chairman of the Committee for the last two or three days in relation to the Mayor's action. Now so far as the records at the City Hall are not entangled in that, there remains so far as the Committee of the Mayor is concerned nothing except a question of facts in relation to the trustworthiness of Mr. Klein. I feel that the Mayor ought to give the facts, and I have not yet asked the Mayor to come here and have not taken the matter up with him this morning at all. I do not intend to ask him to call, but I shall ask him for an interview and will go over to the City Hall and ask him to give me those facts.

As to the matter of it losing its public importance in a general way, why I feel that I am willing to go over to the Mayor's office and talk with him about it.

Mr. Moss.— Mr. Chairman, since Mr. Klein's name has been mentioned, I don't want it to stand upon the record as though there were merely a suggestion by the Mayor that Mr. Klein is untrustworthy and that we have so little knowledge of our employee that we take that suggestion as any imputation upon Mr. Klein.

I think it is a very unfair and a very improper thing for a man to slur another in the way that the Mayor has seen fit to do to Mr. Klein. Mr. Klein has proven himself to be a worthy, a useful, and a trustworthy investigator for this Committee, and I personally resent the imputation that is made upon Mr. Klein in this way, and I think I know the reason for it. I therefore wish to put it upon the record. There is no man in New York that knows City conditions better than Mr. Klein does. There is no one that has had to do with them in a private way, not as a public official,

but as a private citizen, more than Mr. Klein, and no one has rendered better service to this community than Mr. Klein, and Mr. Klein has been very serviceable to the Mayor of the City. But there is this fact that remains: Mr. Klein, in an independent way which has always characterized him, published a paper called "Klein's Weekly," and Mr. Klein did not hesitate in that paper to hold members of the Board of Estimate, particularly Mr. Mitchel, Mr. Prendergast, Mr. McAneny responsible for the wasting of the City's money at a time when money was needed for subways and at a time when it was claimed that there was a persistent effort to cut into the debt margin. I have in my bag now a number of clippings from "Klein's Weekly," in which he holds Mr. Mitchel, Mr. McAneny and Mr. Prendergast by name responsible for such items as Dreamland Park, Seaside Park, East River Park, Marginal Railway, and things of that kind. Later he published a book entitled "Bankrupting a Great City," in which he did not use names, but his references were very plain, so that he was holding in publication these officials of the City responsible for the wasting of the City's funds, and in my opinion that has led the Mayor to dislike Mr. Klein, and he has taken this indirect way of aspersing by imputation his character, and I think that we owe it to ourselves and to a faithful and useful assistant of the Committee to compel Mr. Mitchel to specify and stand up to his accusation like a man, and I believe Mr. Klein wants nothing better than that. I understand from Mr. Klein that it is his desire that the Mayor should specify as publicly as he likes the items which he would insinuate or charge untrustworthiness.

Senator Thompson.—I rather dislike the idea of bringing the Mayor over here.

Mr. Moss.—I am not willing to accept the services of a man who works as faithfully as Mr. Klein and not stand up for Mr. Klein.

Senator Thompson.—In a matter of this kind there is a certain amount precedence that is due to the Mayor of this City.

MR. JOHN J. McDERMOTT, having been duly sworn, testified as follows:

Q. (By Senator Thompson.) What is your office in the Controller's office? A. Chief Clerk.

Q. Do you know Mr. Charles O'Malley? A. Yes, sir.

Q. I understand he is not in the Controller's office today. A. No.

Q. Where is he? A. The last I knew he was up at Alexandria Bay.

Q. How long ago did he go? A. Last Thursday afternoon, and he will be away until about the 5th of July.

Q. Is it Alexandria Bay, New York? A. His last address there was Marsden House.

Q. When did you last hear from him? A. I have not heard from him since he left.

Q. You say he has not had a vacation before in sometime? A. He usually does not take much of a vacation.

Q. How long have you been in the Controller's office? A. Twenty-five years.

Q. How long has he been there? A. Seven years.

Q. For the last seven years he has not taken any vacation?

I don't say that. He takes week-ends. I don't know that he takes a week at one time.

Senator Thompson.—I will issue a subpoena for Mr. Charles O'Malley.

Mr. Klein.—Mr. Chairman, I have no objection to your seeing the Mayor with regard to me. I am very glad that you are going over there.

The day the Mayor issued that statement to the newspapers, and not to this Committee, insinuating something about my record and personal character — and I quote his words — before I knew of such a statement or before you knew of such a statement, I told you I requested the Mayor's presence before this Committee to explain. That invitation was issued by Senator Lawson, Acting Chairman. The Mayor has not responded to that invitation.

Now I again request the Chairman to invite the Mayor to come before this Committee and explain his statement. If he fails to accept the invitation, I ask the Chairman to subpoena the Mayor before this Committee.

Senator Thompson.— We will see about that.

Mr. Klein.— The Mayor will not escape the responsibility for what he said.

Senator Thompson.— Now there is one more witness since we have been attempting to get Mr. Walter G. Oakman, one of the Directors of the Brooklyn Rapid Transit and also one of the Directors of the Hudson Tubes; an Executor of the estate of Andrew Freedman, and one of the Directors of the Guaranty Trust Company. Mr. Oakman was subpoenaed before this Committee some time in the winter and was excused, and he promised his presence whenever requested by the Chairman. We don't get information that he is out of town, but we have been unable to serve a subpoena since last week. I referred the matter to Mr. Yeomans to ask Mr. Oakman to appear this morning. I had him on the telephone this morning and he said he had been able to get in touch with him, and he would be here this afternoon at 2:30.

I received a letter yesterday morning direct to me, which said:

“ Before you close up shop will you very kindly find out why the 5th Avenue Bus Company is allowed to use Washington Square Park for a garage. This company has got so bold of late that they rope off about eighty square feet of the children's play ground. They keep two unsightly water barrels in the park. If I were to throw a piece of paper in the park I would probably be arrested and fined ten (10) dollars. Yet here is a rich company who is allowed to make a pest hole out of one of our parks. Who is getting the graft?

“ Honorable Sir, why not look over the ground yourself. The proof of the pudding is in the eating of it at all stages of the game.

“ Please keep up the good work.

“ With great esteem, I am,

“ THOMAS A. PURTELL,

“ 669 Greenwich St.,

“ Borough of Manhattan.”

I called Mr. Quackenbush's attention to this yesterday and his suggestion was to ride up there, which we did. We found that the

situation was about as presented in the letter. It did rope off part of the playground and they did also keep two water barrels from which they poured water into the cars (what they did not spill on the street), and that situation was about as indicated. A question occurs to me as to whether or not the city is in the habit of granting those privileges in the street to other people.

I found the facts in that letter to be correct and that is why I put it on the record.

Mr. Quackenbush.— After my conversation with the chairman I also went up there last night and looked the ground over, and I agree the facts are substantially stated in that letter. I talked with the president of the Fifth Avenue Coach Company, Mr. Meade. He stated to me that during the period when a great many transient visitors are in New York, it has been their habit to go to Washington Square because they know that that is the southern end of the route and they have been congregating there in order to get on the busses and get on the top, and that there was crowding. He said they had a right to be in the street and they had a right to go there to get on the busses. There was some disorder, however, and they took it up with some officer — I think it was with the Park Commissioner himself — about a way to secure an orderly handling of those people, so that the people who wanted to take the busses up Riverside Drive could group themselves in one place, and those going up St. Nicholas Avenue could group themselves in another place.

So far as the barrels are concerned, the Committee doubtless noticed that they are painted a deep olive green to make them artistic, and, I said to the chairman and the president, if any complaint should come from any citizen about that use of the park, I see no reason why they could not in some of the adjoining places on the southerly side find storage for those barrels, carry the water over there, and remove that objection. The president said he would take that under consideration. There is no desire to use the public space as a garage. The whole thing has been done as a matter of convenience to the public.

Senator Thompson.— We will refer the matter to the Park Commissioner, and I will send him this letter.

Mr. Quackenbush.—Now while I am here I will take up another matter. I got word that you desired the presence of Mr. Hedley at 12:30 today. Mr. Hedley left last night for Niagara Falls to attend the State Convention of Railways. It is a matter that requires his attendance.

Mr. Moss.—Perhaps Mr. Quackenbush could answer some questions, Mr. Klein. (We will manage this some other way I guess.)

Senator Thompson.—I don't think Mr. Hedley went away because we wanted him.

Mr. Klein.—To recall the facts of your contract, Mr. Moore, the Board of Estimate finally approved the contract and voted the corporate stock under a stipulation, was it not? A. (By Mr. Moore) I think they did. I have never received any notice of it.

Mr. Klein.—I will read an extract from the report of the Controller to the Board of Estimate on May 13, 1916, as follows:

“The original application for consent to this contract award was denied by the Board on December 3, 1916, on receipt of the opinion of the corporation counsel dated November 10, 1915, to the effect that such construction cost should be the obligation of the lessee under the terms of Contract No. 3, and not of the City, as proposed by the requisition for funds.

“As the result of conferences held between the Chairman of the Committee on Transit of the Board, the representatives of the Law Department, Public Service Commission and the Interborough Rapid Transit Company, the lessee, a form of stipulation has been devised, to be signed by the City and the lessee, whereby the consent of this Board to this contract award, will act without prejudice to the rights of the City in any subsequent legal proceedings to be undertaken in the matter, and assuring that the lessee will reimburse the City for such costs if determined to be a proper equipment charge. I am advised that this stipulation meets the approval of the corporation counsel.”

That suggests the opening of a legal dispute over the entire matter of duct charges and equipment, does it not? A. Certainly it does.

Q. And the Controller says that the amount involved is a million dollars? A. I fail to see how a stipulation from the corporation counsel can make legal an illegal matter.

Q. First in your case you were willing to accept the contract when it was first awarded to you, were you not? A. I provided bonds and was ready to accept it at that time.

Q. Have you since declined the contract? A. I have.

Q. On what grounds? A. On the grounds of nine months inaction on the part of the City. I could not afford to keep myself bound under this contract for an indefinite time. The City required me to take action. As a matter of fact the value of the work had increased at least fifty per cent. during that period of time.

Q. How do you figure that? A. On the various labor and material necessary to go into the work.

Q. What material is required in this contract? A. Well there is a certain amount of steel. Steel at that time was worth \$35 a ton. It is worth about \$85 a ton now.

Q. Nine months made that difference? A. Yes.

Q. What else? A. As a matter of fact the bids of steel on the last subway letting was almost 100 per cent. advance.

Q. What was the cost of steel prior to the war, structural steel? A. Structural steel for the past two or three years has been comparatively cheap. It has been \$35 or \$40 a ton.

Q. What other material do you require to fulfill your contract? A. Ducts have increased from about four and a quarter cents per duct foot to about six and a half cents per duct foot.

Q. Any other material? A. There is a very considerable amount of rock excavation for which we have to use dynamite. It has gone up from 18 cents a pound to 40 cents a pound. When I bid on this work, good labor was \$1.65 a day; labor is now worth \$2.50 a day, and they are not willing to work and are independent.

Q. Isn't such a price of \$1.65 under the prevailing rate of wage? A. That was the prevailing rate of wage.

Q. The point involved in your contract is that these ducts are separated from the subway proper, and that as such, the construction is construed differently by the City authorities than by the Public Service Commission? A. Yes.

Q. That construction is made under what article in Contract 3? A. Well, I could not tell you the exact number of the contract article. If you have a copy of it, I can probably find it. I made a brief on the matter myself, which refers to all those articles. I have not a copy of it here.

Q. Well you have notified the Public Service Commission that you refused to accept the contract as finally approved by the Board of Estimate? A. Yes.

Q. On the ground that it would be a loss to you now? A. At that time that I refused to accept the contract, no action had been taken by the Board of Estimate in the completion of this award, and I felt that the matter had been in abeyance long enough. I did not know when they were going to take action, and at the same time I felt it had gone so far that it would mean a loss, while originally it would have meant a profit.

Mr. Moss.—I place in evidence a letter written by the Controller, showing the debt limit statements from 1908 to 1916:

“In response to a request from Mr. H. H. Klein, asking that you be furnished with a statement for the purposes of the Thompson Committee, showing the City’s borrowing margin as at the first of January of the years stated hereunder, the Comptroller directed me to prepare and transmit to you such a statement. The City’s debt-incurring power as at the different dates stated was as follows:

January 1, 1908	\$27,695,740.52 (a)
January 1, 1909	48,605,847.85
January 1, 1910	58,764,207.37
January 1, 1911	78,886,025.67 (b)
January 1, 1912	125,684,696.61 (c)
January 1, 1913	88,814,093.45
March 31, 1913	70,687,707.33 (d)
January 1, 1914	51,373,749.62
January 1, 1915	56,792,917.06
January 1, 1916	54,326,698.54

“(a) The figures thus indicated above reflect the margin of debt limit as then construed. If the debt-incurring power of the City had been determined then in accordance with the principles subsequently laid down by the Court of Appeals the margin would have been \$57,695,000, or practically \$30,000,000 more.

“(b) On July 5, 1910, the Appellate Division of the Supreme Court exempted \$43,868,325.18 of Manhattan-Bronx rapid transit bonds.

“(c) On April 5, 1911, the Appellate Division exempted \$3,614,400 of Brooklyn-Manhattan rapid transit bonds.

“(d) On January 31, 1913, the Appellate Division exempted \$69,913,053.55 of dock bonds. On March 18, 1913, the Board of Estimate and Apportionment authorized contracts of \$88,200,000 for rapid transit construction under Contracts Nos. 3 and 4, which became a part of the City's debt; the balance of debt-incurring power of the City, after these contracts were charged, was as indicated above by (d).

“I would here direct attention to a factor which should not be overlooked, viz.: that the margin of Constitutional debt-incurring power possessed by the City as at the several periods stated was encumbered by whatever commitments had been made against such by the Board of Estimate and Apportionment in the form of authorizations for the issuance of corporate stock (bonds) to provide funds for the carrying out of public improvements authorized by the Board.

“For instance, on the first of January the City's *debt limit*, as may be noted from the foregoing statement, was \$54,326,698.54; but there were commitments against this consisting of reserves and authorizations for various municipal improvements aggregating \$32,094,237.53, *which, while not a debt, as no contracts had yet been entered into* based upon these authorizations, yet they were commitments of such a character as practically resulted in reducing the *free margin available* for authorization by the Board of Estimate and Apportionment to *\$22,232,461.01. On January 1, 1915, the *free margin* was \$19,157,312.14, and at the beginning of the year preceding, with a *debt limit* of \$51,373,749,

the *free margin* available for authorizing new improvements was \$16,579,634.01.

" On January 1, 1910, the existing authorizations to incur debt were many millions of dollars in *excess* of the City's Constitutional *debt limit*, or power to incur debt, at that time. This was the cumulative result of authorizing improvements in excess of debt limit on the ground —

" (1) that authorizations *are not debt*; therefore that until contracts were entered into by departments and were also registered by the Comptroller *no debt* was incurred (which is correct); and

" (2) that authorizations could at any time be reduced or rescinded — as frequently occurs.

* See Debt Limit Statement. Jan. 1, 1916, in manual.

" This policy, however, was stopped in 1910 and by reduction in and rescindments of existing authorizations; by continuous constraint in approving new authorizations, and by the increase in realty assessments, the debt-incurring power of the City *overtook and passed* the sum total of all outstanding authorizations, so that, on January 1, 1911, with a debt limit of \$78,886,025.67, there was approximately twenty millions of dollars of free margin within the debt limit for the authorization of new improvements.

" The policy, since 1910, of the Board of Estimate and Apportionment, based upon the Comptroller's decision in this respect, has been to restrain and limit the authorizations for the issuance of corporate stock to cover costs of public improvements to within the sum total for which contracts could be entered into and debts thereby incurred.

" There is transmitted under separate cover a printed copy of the Debt Limit statement as of January 1, 1916, together with a summary of the Constitutional provisions, Legislative enactments, and court decisions which determine the kind of debt which enters into and the kind of debt which must be excluded from the debt of the City within the Constitutional debt limit. It is under the principle described in said manual that the statement reflecting the Constitutional debt-in-

curing power of the City have been prepared since January 1, 1910."

MR. DANIEL L. TURNER, having been previously sworn, testified as follows:

Q. (By Mr. Schuster.) Mr. Turner, you are familiar with the certificate for tracks between the Public Service Commission and the New York Municipal Corporation? A. Yes.

Q. And that certificate authorized the New York Municipal Railway Corporation, among other things, to third-track certain of its existing elevated lines, particularly the Brooklyn and the Fulton Street, the Myrtle Avenue line, and also to reconstruct the existing elevated lines so as to accommodate the third tracks? A. Yes, that is so.

Q. Now the cost, the initial cost of that third-tracking and the reconstruction of the elevated existing system, is borne by the New York Municipal Railway Corporation? A. Yes.

Q. But the City has reserved the right to terminate the franchised rights granted by this certificate? A. It has.

Q. Any time after ten years. A. Yes.

Q. Upon reimbursing the New York Municipal for its cost of the third-tracking of those three elevated systems and in accordance with the amortization figures set forth in the certificate itself? A. That is so.

Q. In the event of the City availing itself of the recapture right under the certificate, will the City receive or will the City procure the physical profits of the existing railroads? A. I don't understand so.

Q. You understand that the City is not entitled to recapture it. All that they recapture is the third-tracking and appertenances to that third-tracking. A. That is my understanding.

Q. Is it also a fact that prior to the making of this contract the New York Consolidated Railway Company, which is the owner of these structures, had constructed and was operating additional tracks on its elevated system? A. Yes, that is so.

Q. Those additional tracks that were in existence prior to the making of the contract, they are not recaptured either under this

certificate, are they? A. I think the recapture parts are asserted in the certificate. Off-hand I can't answer that question.

Q. That seems to be the fact. The reason that all of the third additional tracks which are described in the recital as being in existence at the time of the making of the contract are expressly excluded, with one single exception; that is that any of those additional tracks which were constructed or erected without any lawful right under existing franchises would be deemed a part of the recapture of the profit. A. Yes.

Q. Now do you know approximately how much of that third-tracking was done by the New York Consolidated Corporation prior to the making of the contract? A. No, I could not tell you off-hand.

Q. Do you know whether it was considerable or not? A. Yes, I think there was quite a little of it completed. Of course there was third track operation in some portions of the lines.

Q. Now the Interborough Metropolitan Elevated System also had third-tracking prior to the making of the contract with the Interborough? Did it not? A. I did not just catch the drift of that.

Q. The elevated system operated by the Interborough Company belongs to the Manhattan Railway Company? A. Yes.

Q. And had the Manhattan Railway Company operated any third tracks prior to January, 1913? A. Yes.

Q. On both of the elevated systems in the City there were operating third track and additional trackage rights prior to making the contract? A. I think that is correct, but I don't think the proportion of third track operation was comparative in extent —

Q. Do you know whether or not this existing third-tracking of this elevated system had to be reconstructed to conform with the third-tracking requirement under the certificate? A. Yes, that was practically so in the case of the Brooklyn lines, but not in the case of the Interborough lines.

Q. They had built permanent third-tracking? A. Their lines were being built practically for the same general character and equipping of operation and they were already operating over third tracks with that same kind of equipment. In the other case, however, the character of equipment was changed.

Q. So far as the B. R. T. is concerned, it was practically a reconstruction of all their third-tracking facilities? A. Yes.

Q. In adapting the structure that carries the rails of the Brooklyn Rapid Transit Company, they had to reconstruct practically the major portion of that sub-structure? A. That is so, because the stations were lengthened for the combination of their longer trains, practically doubled in length all the way along, and that practically meant respacing the stations.

Q. Now the cost of that reconstruction of the existing elevated systems, is that to constitute any part of the contribution provided for in Contract No. 4 by the lessee? A. No, they pay for that independently of their contribution towards the City's construction. We speak of the contribution, the thirteen and a half million; none of that comes out of that amount of money.

Q. But whatever that expenditure may be on reconstruction, it is gotten through the same process of determination by the engineer as the contributed part? A. Absolutely.

Q. And it is the expenditures for the reconstruction that the City would have to acquire by purchase under the certificate, if they terminated the rights of the railroad company as granted by this certificate? A. Well, I am not so sure about that. That is a question that really I have not considered. We are keeping minute detail checks on the cost of the work that goes into the construction.

Now as I understand your question, you wanted to know whether all the expenditures made in the process of the third track work and the reconstruction incidental thereto would have to be borne by the City in case of the recapture of the City.

Q. Yes. A. I am not sure about that.

Q. That matter has never been discussed? A. No, not to my knowledge.

Q. We find that in the prior determination and the Sixth Quarterly Determination in your evidence here so far made, you segregate these expenditures on the New York Municipal under four separate heads: First, "The Railroad," then "Reconstruction of Existing Railroads," then "Additional Tracks," and then "Elevated Extensions." Now the "Additional Tracks" is under a separate certificate. A. That is so.

Q. And the "Elevated Extensions" is under still another certificate. And provisions referring to the "Reconstruction of Existing Railroads" are both contained in the Contract No. 4 and in the certificate for the "Additional Tracks." A. That is so. That is in the contract. The reconstruction of existing railroads is definitely described.

Q. In the certificate? A. No, not in the certificate. It is in the contract.

Q. Now I will show you Exhibit 1 of June 26th, which is a tabulation of the expenditures by the lessee, covering the period from March 19, 1913, to June 30, 1913, inclusive, and that same classification seems to run through all of the other determinations. A. Yes.

Q. Now the amount of expenditures included under "Reconstruction of Existing Railroads" has to do with expenditures on only the properties in existence at the time of making the contract? A. That is right.

Q. Now if the City wants to recapture its additional tracks, elevated extensions, or the railroad or subway under Contract No. 4, under any of those certificates or the contract, will the City be required to reimburse the company for these reconstruction costs? A. Well I don't think the reconstructed parts of the existing railroads are subject to recapture. It is only the matters that the companies were given additional rights to.

Q. You are right in your understanding of that. What I want to know is whether or not the expenditures are a part of what is considered the cost which the City must pay on the recapture of its third tracks? A. Only where they are applicable to the parts recaptured. That is my understanding of the contract.

Q. Is that also the understanding of the officers of the Brooklyn Rapid Transit? A. I can't say.

Q. The interpretation in regard to those matters has never been discussed? A. Not to my knowledge.

Q. (By Senator Lawson) Do you consider that the Broadway elevated is subject to recapture? A. The Broadway elevated is subject to recapture, but no reconstruction of existing railroads, which is entirely separate.

Q. For instance, the entire structure of the Broadway "L" is being absolutely reconstructed — new structure and everything. Now does any part of the cost of construction of the structure itself, outside of the third-tracking of the Broadway "L," come within the City contract, to be paid for by the City? A. No, not at all. It is paid for under the Additional Track Certificate, which is company money.

Q. And insofar as that particular system is concerned, if the City wanted to take that over as a municipally owned line, they would have to buy it outright, exclusive of the third track A. Yes. That is my understanding of it.

Q. (By Mr. Schuster) Now what they take or pay for under the certificate is the plain property. It says here that the City may determine these authorizations. A. I don't have in my head all the details.

Q. Reading from the certificate of the New York Municipal Railway Corporation, on page 20:

"The words 'Plant and Property' mean as to any of the railroads, the equipment and the plant and structure thereof.

"The word 'Equipment' means as to any of the railroads the following property (including additions) suitable to and necessarily used solely for the purposes of the 'plant and structure' as hereinafter defined of the same and owned by the Subway Company, namely: Power substations and the real estate upon which they are built and any and all wires, cables and conduits not affixed to the structure in streets or on rights of way.

"The words 'Plant and Structure' mean as to any of the railroads only such third or additional tracks and other structures provided exclusively therefor as may hereafter be constructed pursuant to the authorization of this certificate (including additions) and such existing third or additional tracks or portions thereof as may become subject to the provisions of this certificate in the manner defined by Article IV, together with such consents, easements of abutting property owners, interests in real estate as distinguished from equipment as hereinbefore defined, signal towers, contact rails,

wires, cables and all other appurtenances affixed to the said third or additional tracks or structures in streets or on rights of way as may be suitable to and necessarily used solely for the purposes of the said tracks and owned by the Subway Company, not including, however, any right to operate said tracks upon the structure of said company, or to maintain the same in such way as to interfere in any manner with complete restoration of service and facilities of the Subway Company."

A. I think that is in accordance with what I expressed as my understanding.

Q. (By Senator Lawson.) Do you know, Mr. Turner, whether the Public Service Commission of the City contemplated, when they made this contract for the third-tracking, that the railroads would practically rebuild these structures? A. Yes. I think that everything necessary has been done. It has been recognized that the general character of the equipment would be changed following it. I think it was generally recognized.

Q. I say that for the reason that it was popularly supposed that when the elevated railroad was authorized to third track, that the public idea of the third-tracking was that there would be a third track built on the existing structure. Instead of doing that the Railroad Company has practically destroyed the existing structure as it stood then and rebuilt it completely. A. You realize that the stations themselves have practically been doubled in length.

Q. It is not so much that, as the fact that at the outset of the authorization of the third-tracking of the existing elevated roads, the newspapers and the people themselves were told at meetings that it was contemplated to merely add a third track on the existing elevated structures; that third track would be constructed with the City's money and would be subject to recapture by the City. Now instead of accomplishing that purpose, the Broadway line and Myrtle Avenue line have been rebuilt, they have been widened, and it might as well be said that they are entirely new structures today. That is what I wanted to know. What was in the mind of the Board of Estimate and Apportionment when they rendered these contracts? A. I can't say what was in their minds.

Senator Thompson leaves room and Senator Lawson takes the Chair.

Mr. Shuster.—Mr. Chairman, the City can recover nothing.

Senator Lawson.—As I explained to Mr. Turner, when these contracts were made, the public were led to believe, and newspapers so announced it, that the structures were not to be rebuilt, but were merely to be added to, the additions being partly paid for by City money, and subject to recapture. Now those are not the terms as the people understood them.

Q. (By Mr. Shuster.) Were you with the Commission during the negotiations. A. (By Mr. Turner.) Yes.

Q. Didn't you know that that was entirely impracticable? A. Surely.

Q. What is the Commission doing? It is part of your work to keep a record that will identify the properties which the City will be entitled to on this reconstruction. A. We have a most minute record of every detail that goes into the work. I think by the figures we would be able to identify any item in the work.

Q. Could you identify the property that that creates? A. I think so.

Q. Just take up the question of stations. The existing railroads had a station at a given point, we will say. That station was found to be useless for the new development. You enlarge that station and practically build a new station. The old station has been junked. Now what part of that station was reconstruction and what part was new and additional work under the Certificate?

Senator Lawson.—That is a pretty difficult question for Mr. Turner to answer, because, Mr. Schuster, they have eliminated the entire stations.

Mr. Turner.—The contracts of course are on a unit basis so far as the structure is concerned, and the finishing of the stations is usually under a separate contract, so that with the information before us we can separate the cost in any way that may be necessary.

Q. (By Mr. Schuster.) I am not interested in how you take care of costs. You seem to do that in great detail. What I want to know is how when the City concludes the recapture, you are going to say that this part of the station belongs to the City and

this belongs to the Railroad. A. What was in my mind was that the certificate indicates the recapture of the third track practically and I don't think we have any right to recapture stations as such.

Q. How do you know what part of the physical property, in the event of the reconstruction of the station, belongs to the City and what part would belong to the Company as a part of the existing railroad? A. I think it is a question of the third track only.

Q. Your idea is that the only thing the City would get would be the third track? A. Yes.

Senator Thompson returns and takes the Chair.

Senator Thompson.—Is there any way of telling what part of these stations was built by the City's money and what part was built by the railroad? A. (By Mr. Turner.) I can't tell. I have not considered such a question at all.

Q. (By Mr. Schuster.) Your understanding has been and is now that the only thing the City recaptures is the actual physical rails of the third tracks? A. They have practically the right to utilize that third track, I should say. Of course I am not a lawyer, but that is my conception of it.

Q. And all of the appurtenances, stations, and the other physical properties that are created would come under your designation of reconstruction of existing railroads and would belong to the New York Municipal Corporation? A. I think they would retain their title to that.

Q. I wanted to know what treatment the Commission is giving to this vital question. A. We have all the detail costs of the work and any separation along any lines can be taken care of when such a question should be legally determined as to where the division came. That is what we are attempting to do.

Q. Assume that you are mistaken as to your interpretation as to what the City would be entitled to recapture, and how will the City know when it comes to recapture what part of that station belongs to them? A. It would have to be determined at that time.

Q. It would be a matter of determination and would probably result in a money transaction rather than a recapture of physical property.

Q. (By Senator Thompson.) Does the City pay, as an actual fact, a part of the costs of construction of these stations? A. Not at all. The Company makes all those expenditures.

Q. Who do they charge it to? A. It is charged to the Additional Track Certificate.

Q. (By Mr. Schuster.) If they want to recover those additional tracks, then they must pay all of those costs that they determined that is property applicable to additional tracks? A. That is a question I can't answer. I don't know.

Q. When the City entered into an agreement in which it reserved to itself recapturable rights, it was the physical property that was to be retained. They were going to reimburse the Railroad Company for parting with physical property. Weren't they? A. That of course again is a question that I can't answer.

Q. Do we understand that the Commission and the City are keeping no permanent record showing what the physical properties are which they may recapture and take title to? A. We have a permanent record absolutely of the physical property that has been included in the Additional Track Certificates.

Q. Will all that property come back? A. That I can't answer.

Q. Will all the cost of that come back? A. I don't know that even.

Q. Has not the Commission or your Department, the Engineering Department, ever discussed a method of keeping records for identifying the property that the City is to recapture outside of your cost sheets? A. Every dollar of expenditure there that is made is identifiable.

Now the interpretation of a contract with respect to what the City recaptures under the Third Track Certificate, I say very frankly I have not had occasion to make any such interpretation. I am not qualified to do so if I were asked.

Q. Let us assume that ten years from the beginning of operations the City concludes to recapture those third tracks. What evidence can the City find in the possession of the Public Service Commission that will definitely determine what they received for their money, what the city will receive for the money which it is required under the contract to pay to the Company that owns it?

A. Well there is a detailed record of the work that has been done and the cost thereof. That is in minute detail, as you know.

Q. Is there anybody connected with the Public Service Commission who today could tell us which part of the recapture the City is entitled to? A. We could not, because we would not be asked to make such an interpretation. That is a legal question entirely.

Q. So this thing can only be definitely known at the time of the recapture period? A. All the costs are available for the determination of that question at any time. Whenever it may be decided, the information is available to enable any division that may be adjudicated to be made.

Q. So far as costs are concerned, but not so far as the actual property to be identified. A. As I stated to you, the contract seems to me to describe the recapturable parts in detail.

Q. See if you can find it in that certificate. I am satisfied you won't find it in that certificate.

Now Contract No. 4 describes in detail what the words "Existing Railroads" mean in Contract No. 4, and doubtless the same meaning is contemplated in the collateral certificate. I am reading from page 3 of Contract No. 4: "The words 'Existing Railroads' to mean the railroads and the equipment thereof belonging to New York Consolidated Railroad Company and which the lessee has the right, and is under obligation to operate, and which are generally described as follows:

"Broadway Line, etc.

"Fulton Street Line, etc.

"Myrtle Avenue Line, etc.

"Lexington Avenue Line, etc.

"Fifth Avenue Line, etc.

"Brighton Beach Line, etc.

"Canarsie Line, etc.

"Sea Beach Line, etc."

After that follows this general description:

"Together with all stations and real estate or interests therein belonging to or used in conjunction therewith and all

appurtenances thereto and all other property to be used thereon or in connection therewith, including the right of the lessee to operate over the New York and Brooklyn Bridge and other trackage rights, terminals, storage yards and shops and together with the plant and property of the Jamaica Avenue and Liberty Avenue extensions and the Broadway, Fulton and Myrtle Avenue additional tracks to be constructed under certificates granted by the Commission to the lessee and together with the Reconstruction of the Existing Railroads for Initial Operation. The words "Existing Railroads" shall also include (except, as otherwise provided in Article XLIX, in respect of payments from the revenue) Additions to the Existing Railroads and the equipment thereof constructed or provided from time to time in accordance with the provisions of this contract. Such portion of the so-called Brighton Beach property as shall not be necessary for the operation of such railroads and all other real estate or property of said New York Consolidated Railroad Company not required for the operation of such railroads or of the railroad shall not be deemed part of the Existing Railroads, as the term is herein defined, for the purposes of this contract."

Now that defines what are to be deemed the Existing Railroads, no part of which the City can recapture. Do you find that same description in that certificate? Find the definition of "Railroads" in there? A. "The word 'Railroads' as used herein means three sets of additional tracks and the appurtenances thereto, herein authorized and referred to as Broadway additional tracks, Fulton Street additional tracks, and Myrtle Avenue additional tracks."

Senator Lawson.—What does that mean, Mr. Turner? A. It even gives the stations and everything, distances.

Q. (By Mr. Schuster) No part of that the City recovers on recapture, but approximately what part of those properties there described have been reconstructed? A. Practically all of them.

Q. And if the City wanted to operate an elevated system, they would have to purchase by a new arrangement, a new agreement,

all of that existing structure that has been reconstructed, and there is nothing in these contracts that gives the City any right to those.

Now the owner of the properties being reconstructed is the New York Consolidated Corporation. Is that true? A. That is right.

Q. The owner of the property is not spending any money on those reconstructions? A. No.

Q. But the New York Municipal is. Where does the New York Municipal get back the money which it is spending in behalf of the New York Consolidated Company in these reconstructions if not by amortization? A. Now Mr. Schuster you are getting into the legal angles of the contracts. I am not qualified to deal with those phases.

Q. You are dealing with and treating as a part of the cost of this joint enterprise the reconstruction existing railroad items identically the same as you deal with third-tracking extensions in the subway. A. We are keeping an accurate record of everything that is done.

Q. You are establishing here for some reason surely a record. Now what is the object of that record? A. The object of that record is to show absolutely the expenditures that have been made in connection with the work.

Q. That is not of interest to the City if it is not expenditures that are being contributed under the contract? A. I should think it would be of very vital interest to the City in more ways than one; first, because the City wants to keep careful supervision over these costs.

Q. I mean its financial interests? A. I was thinking as it affects the pooling of the properties and the costs of all of the projects. All these costs are costs that are taken into consideration —

Q. But if the City is not to reimburse the company on the recapture of the properties, what particular interest has the City in this information? A. It certainly is to serve the basis from which the City would have to reimburse the company if they took over these additional tracks. But what you are asking me now is to say what that reimbursement would amount to. I could not personally say that, and furthermore it is a question which I don't think would be of interest at this time.

Q. If the City wants to buy it ultimately, they know the value. Is that it? A. For example, we have stated here that this money has been spent in reconstruction and the costs are indicated.

Q. The moneys that are provided for that reconstruction are not provided by the owner of the property? A. No, they are not provided by the City either.

Q. They are provided for by the contract between the City and the New York Municipal? A. Yes.

Q. Is not it a fact, Mr. Turner, that the City contemplated that if ever it wants to recapture any part of the third-tracking or the extension, that they must inevitably buy the whole structure, otherwise it would be useless? A. The third-tracking of course from an operating standpoint is absolutely valueless, but the City by the recapture clause controls the use of that privilege undoubtedly, and likewise if it wants to recapture, can destroy the usefulness of the railroad very largely as well. That is, as territory develops along those lines the third track would be absolutely necessary.

Q. The engineer is not required under the contract to determine these costs at all? A. The engineer is to determine under the contract all costs within the purview of the contract.

Q. I find that in these certificates you have a little footnote which you say is not in accordance with the definition. A. That is the reconstruction proposition.

Q. I will read from page 9 of the Second Quarterly Determination:

“Reconstruction of Existing Railroads—\$2,395.42,” and there is an asterisk referring to a footnote which is as follows: “This item is not specifically covered by the definition above quoted.” A. There is a definition in the contract, but it does not mention specifically reconstruction items. We have to find the reconstruction items defined in exactly the same way as the others.

Q. Not because you thought they were going to be recaptured? A. No.

Q. (By Senator Lawson) Is there a charge by the City for this work? A. The City's Engineer superintends on the third tracks and everything else is charged as third-tracking.

Q. Why should the City be entitled to any allowance on reconstruction? A. Simply because it has to exercise supervision over this work and the supervision has been paid for, and the contract stipulates that it should be a charge against construction instead of in some other way.

Q. Construction does not include the different railroads. A. It states specifically how that is charged.

Q. The question in my mind is why the City should be charged for superintendence? A. In other words it is in the interests of the City to get the money back.

Mr. Schuster.—It may be in the interests of the City or it may not be. A. Of course I don't see how it may not be.

Senator Thompson.—We will suspend now until 2:30.

AFTERNOON SESSION.

Meeting convened at 2:30 o'clock, Senator Thompson presiding.

Mr. Schuster.—Mr. Chairman, I would like to complete our records. I offer in evidence the Seventh and Eighth Quarterly Determinations, dated July 2, 1915, and June 5, 1916, respectively, as a part of the record.

MR. RAGLAND MOMAND, having been duly sworn, testified as follows:

Q. (By Mr. Moss.) Mr. Momand, you are in business at 38 Murray Street? A. Yes.

Q. And what is your business? A. Street lighting and contract work.

Q. How long have you been in that kind of business? A. For the last twelve years.

MR. WALTER G. OAKMAN, having been duly sworn, testified as follows:

Q. (By Mr. Moss.) Mr. Oakman, have you been connected with the Brooklyn Rapid Transit Company? A. Yes, sir, I have.

Q. With any of its subsidiary companies? A. Yes.

Q. Which? A. With the Brooklyn and four or five of the sub-

subsidiary companies; the Municipal Company and four or five other subsidiary companies.

Q. How long have you been interested in those companies, or some of them? A. For ten or fifteen years.

Q. Have you been closely associated with Mr. Brady? A. Not closely, no, but as one of the directors.

Q. You have I think been a member of the committee that called upon the Mayor in regard to Brooklyn Rapid Transit matters? A. No, I never did go to the Mayor.

Q. We had this morning a letter signed by Mr. Willcox, addressed to the Mayor, in which he stated to the Mayor (this was in 1910) that a Committee consisting of Mr. Brady and yourself and Colonel Williams called upon him with reference to B. R. T. matters. Have you any recollection of that? A. My recollection is that I did not call.

Q. Have you any recollection of having been appointed on a Committee to call on the Mayor in the early part of 1910? A. No. My recollection is that I never saw the Mayor in connection with this thing. I may be incorrect in this, but if so, it was entirely an inconsequent meeting such as would not impress itself on my mind at all. But my recollection is that I never called on the Mayor.

Q. Have you a recollection of being appointed on a committee that was to call on the Mayor? A. No.

Q. Did you know of a committee representing you to call on the Mayor? A. I have no recollection.

Q. Do you remember when your company or any of its affiliations publicly announced a desire or an intent, or a thought of entering into Manhattan Island? A. Yes.

Q. What was that? A. I refer you to the records.

Q. There was a proposition made in 1911, but were not there statements made, emanating from the Company and appearing in the public press, as far back as 1909 that the Company contemplated entering into Manhattan if it could? A. I don't recollect it. It is a long time since and I don't trust my recollection as far back as that.

Q. Well were you in frequent conference with Colonel Williams and Mr. Brady and those who were associated with you in the con-

trol of the railroad? A. Merely as a member of the Executive Committee.

Q. Can you not recall that it was discussed between you that it would be desirable to enter the Borough of Manhattan long before any formal proposition was made by you? A. I recall that the proposition was discussed long before it was made, but how long I am unable to say.

Q. Were there any members of the Board of Estimate and Apportionment as early as the time you proposed to enter, who were favorable to your going into the B. R. T. matter? A. I have no recollection of that.

Q. During the negotiations in 1911 when things were pretty well mixed up between the B. R. T. and the Interborough, was not Mr. McAneny understood by you gentlemen to be favorable to the B. R. T.? A. Not especially. He was favorable to the City of New York.

Q. But he considered that the entrance to the Borough of Manhattan would be favorable to the City of New York? A. Yes.

Q. Did you consider that any member of the Board of Estimate took a contrary position? A. I don't think I have sufficient recollection to testify as to what my impression is with regard to that.

Q. I am only speaking of the impression that was formed by you when in conference with your associates. Was not it understood and agreed among your associates that the Mayor was against the B. R. T. coming into Manhattan? A. It was our feeling that Mayor Gaynor was favorable to the Interborough proposition.

Q. And if necessary, against the B. R. T., in favor of the Interborough? A. Oh, yes. It depended entirely upon what the outcome of the negotiation was.

Q. Did you place Mr. Prendergast in line with the Mayor or in line with Mr. McAneny? A. I did not undertake to assess the respective values of the Board of Estimate.

Q. Well the B. R. T. was anxious to get into the subway system, was it not? A. It was desirous, yes.

Q. And necessarily it had to consider the persons whose votes were essential to any action that would let it in. Is not that so? A. Yes, sir.

Q. And in considering those votes, I have already your idea about Mr. McAneny and about the Mayor, but did not you consider in estimating the obstacles that had to be overcome, that Mr. Prendergast was probably lined up with the Mayor? A. I did not take an active part in that. That was referred to Colonel Williams as the head of the concern, and as far as estimates of the various members of the Board were concerned, I don't know.

Q. You attended the meetings and took part in the discussions? A. Yes.

Q. When Colonel Williams acted, he acted after conference with these gentlemen. Did he not? A. Yes.

Q. That was not practically what you agreed to the situation? A. I don't care to testify regarding a matter of that kind.

Q. Have you no recollection upon that point at all? A. No definite recollection.

Q. Haven't you some recollection? A. Perhaps so.

Q. I think we would like to have that. What is the recollection you had in assessing the position of Mr. Prendergast? A. Not definite enough to make me willing to testify.

Q. Do you mean to say it is so indefinite that it would not be fair to him? A. Yes.

Q. Well at the same time you were connected with the B. R. T. were you also connected with the Hudson and Manhattan tubes? A. I was.

Q. As a Director? A. As a Director.

Q. Do you remember when the proposition was made by the Hudson and Manhattan tubes to the City of New York to come in and build a subway here? A. Yes.

Q. Were you then a member of the Board of Directors in the B. R. T.? A. I was.

Q. Did you take part in the conferences in the Hudson and Manhattan Tube Company which resulted in that proposition being made? A. No I did not.

Q. Did you oppose it? A. No.

Q. You knew of it? A. That was a proposition which was made and I was not consulted about it because my relationship elsewhere would have been embarrassing if I had been, and so consequently the other members of the Board made the proposition.

Q. When you say your relationships elsewhere, what do you mean? A. Relationships with the Brooklyn Rapid Transit.

Q. At the same time you were in a position where you had a right to and could exercise some power in the interests of the B. R. T. Is not that so? A. Well, it was a partially conflicting interest there and I also endeavored to avoid —

Q. I understand, but if a proposition coming from the Manhattan and Hudson Tube Company, of which you were a Director, would be injurious to the B. R. T., of which you were a Director, to make your objection as effective in the Hudson River Tube. Interborough and I resigned from the Interborough. I can't recollect. But at the same time if I am a Director in two companies and their interests conflict, I have always thought that my position was to side with both.

Q. Didn't you represent to the Hudson Tube Company that such a proposition would be injurious? A. No, I did not.

Q. Why didn't you? A. Simply as I say, I had no right to influence the Manhattan Hudson Railway Company in a matter which affected its interests. I have always felt that where I happen to be on conflicting boards I have no right to represent one interest against the other.

Q. Well there might be a situation in which you would not be in that dual position, in which you would be simply speaking of the interests that one company would have had as being affected by the other. That is what I had in mind.

Did you speak to your associates in the B. R. T. about the proposition coming over from the Hudson Tube? A. I spoke of it, yes.

Q. You told them it was coming?

Senator Thompson.—According to your idea the more companies you are director of, the less you have to do. A. Not necessarily. It is only occasionally in a position like that. If it is a seriously conflicting position, my idea is that a man ought to get out.

Q. (By Mr. Moss.) Was there a serious conflict? A. No.

Q. Then there was no reason that you should not take part in it? A. I did take part in it.

Q. Did you have any interest in the Interborough? A. No.

Q. Did you know Mr. Freedman? A. Yes.

Q. Were you closely associated with him? A. Not closely associated. I was a member of the Board, of which he was also a member for a number of years in the Interborough.

Q. When did your relations with the Interborough cease? A. I can't tell you what year, but it was at the same time I resigned from the Interborough when the Hudson and Manhattan built up Sixth Avenue. That made a possible complication with the Interborough and I resigned from the Interborough. I can't recollect just what year.

Q. Is it your recollection that at the time the proposition of the Hudson Tube was put in you had then resigned from the Interborough before that? A. Yes.

Q. But did not you continue in friendly relations with Mr. Freedman? A. Oh, yes.

Q. Did you often confer with him about Interborough matters after you left the Board? A. No.

Q. Have you any relation to Mr. Freedman's will? A. I am an Executor of his estate.

Q. And as an Executor you have legal possession of his papers? A. Joint legal possession.

Q. Now did you consider that the proposition of the Hudson Tube was antagonizing to the Interborough? A. Perhaps.

Q. But not antagonizing to the B. R. T.? A. Not at that time.

Q. Do you remember when the banking house of J. P. Morgan & Company handled the finances of the Hudson River Tube? A. They never did.

Q. It has been testified that they did. A. That is without my knowledge.

Q. Was not J. P. Morgan & Company behind Mr. Fiske? J. P. Morgan was among those with Mr. Fiske who openly handled the Hudson River Tube? A. Yes.

Q. When did Kuhn, Loeb & Company come in? A. They never openly came in until the reorganization of the Hudson and Manhattan Railroad Company.

Q. Was not the proposition of the Hudson River Tube really a friendly movement as towards the B. R. T. and the Interborough? A. I don't quite understand you.

Q. Was it intended that the proposition of the Hudson Tube Company should be in antagonism to the Interborough and the B. R. T.? A. No.

Q. Was not it intended that it should be made weight in the subway situation? A. Well, it was a proposition which was injected into the situation when there appeared to be a deadlock in other directions.

Q. And really for the purpose of trying to break the deadlock, was it not? A. Perhaps.

Q. Did the directors authorize the making of that proposition? A. I never referred to the records.

Q. Whether or not you took part in authorizing that proposition? A. No, personally I did not, as I recollect.

Q. Do you know whether Mr. McAdoo did it in his own way without having a vote of the Board? A. That I am unable to say at the present time.

Q. Have not you been informed that that was the fact? A. No, I have not been informed, because I didn't recollect that I ever saw any information about it.

Q. Do you know of any close relations between Mr. McAdoo and the J. P. Morgan house? A. No. I didn't think there were any.

Q. Do you know how much of each five-cent fare the Pennsylvania Railroad gets from the Manhattan Tube? A. Yes, I can't tell you exactly, but it is a very small percentage on a certain amount of their business.

Senator Thompson.—Are you a director of the Pennsylvania Railroad? A. No.

Q. Have you been? A. Never been.

Q. Were you interested in the road? A. No.

Q. You are a director of the Hudson Manhattan Tubes and you are a director of the B. R. T. and some of the subsidiary companies, and a director of the Guaranty Trust Company? A. Not of the Guaranty Trust Company.

Q. (By Mr. Moss) Had Mr. Freedman a bank account in London? A. Not to my knowledge.

Q. Have you any knowledge of any property that he had in London? A. No.

Q. Are there any securities on deposit there? A. I had a list of his securities.

Q. No recollection of his having any money there at all? A. No.

Senator Thompson.—Did he have a bank account abroad? A. I am merely testifying as to my recollection of the list of securities that were entered.

Q. Did he have a bank account abroad, outside the State? A. He had a small bank account in New Jersey.

Q. (By Mr. Moss) He had a bank account in Jersey in which he sometimes deposited as much of \$500,000. You speak of it as a small account. A. Well I only have the memorandum of the bank account of the day after his death.

Q. You have no information of any bank account that he had anywhere in Europe? A. None at all.

Q. (By Senator Thompson) Are you familiar with all the affairs of the estate? A. In a general way I am.

Q. So if there were such a bank account, you would know it? A. I can't say that, except that I have a list of his securities and his bank accounts and I have no knowledge at the present time of his having had any bank account abroad.

Q. You of course don't give personal attention to this business of Mr. Freedman's estate? A. I give it attention in a way.

Q. Who gives attention to it? A. In the office of Guggenheimer & Untermeyer, Mr. Untermeyer is an executor and they give it a great deal of attention.

Q. (By Mr. Moss) Do you know Mr. John Mackye, confidential man with Mr. Freedman? A. I don't know any man by that name.

Q. Now when the Committee desires to examine some of Mr. Freedman's checks and papers, as executor you have no objection to that? A. Yes, I have an objection as a trustee, naturally, to turning loose to the Committee or anybody else on a general foraging expedition Mr. Freedman's affairs. If there is anything which the Committee wishes to inquire about relevant to any of the Committee's purposes, and so on, why of course I will do it.

Senator Thompson.—Mr. Freedman did not separate those things before he died, did he? He did not make a separation of items in his books and put the check stubs relevant to this investigation in a pile. Did he? A. Well, the Committee has already published a letter which had absolutely nothing to do with the Committee's examination, from Mr. Freedman's files. I think it was an utter breach of faith.

Q. (By Mr. Moss) What letter was that? A. A letter from Mr. Quigg.

Mr. Moss.—We got nothing from your files.

Q. (By Senator Thompson) Were there any letters in Mr. Freedman's file from Mr. Quigg? A. No.

Q. This had nothing to do with the Hudson and Manhattan or the Guaranty Trust, had it? A. No.

Senator Thompson.—I will inform you that the letter that you mentioned was gotten from the Gillespie papers, which was entirely material to this investigation because it was charged up on the books to Mr. Gillespie for matters collected by this Committee. A. That is the letter I refer to.

Mr. Moss.—That went into the record as a relevant paper.

Now to give you an idea of some of the things that have been difficult for us to understand in the Freedman accounts, there is a large mass of checks of Mr. Freedman's drawn to bearer, thousands and thousands of dollars drawn to bearer; many of them are endorsed by a young man named Jacques S. Cohen.

Do you remember Mr. Cohen? I think he was Mr. Freedman's clerk. A. I think I do recollect him.

Q. Now of course it would be very natural for some checks to be drawn to bearer and some checks to be cashed by an office clerk. But there are scores of these checks, if not hundreds of them, amounting to, I think, hundreds of thousands of dollars drawn to bearer, endorsed by Jacques S. Cohen, along periods which are important to this investigation, and I tell you frankly I don't want to have any misunderstanding between you and me about it. The Committee has been interested in those checks and interested

in tracing the transactions into which they went, because Mr. Freedman was a director of the Interborough Company at those times and those checks have dates that have, at least so far as dates are concerned, interesting relations. That is why I put the question to you, whether you as an executor would be willing to have papers that would seem to be important to the Committee examined. We will take for instance those Cohen checks. They ought to be examined and they ought to be traced. It may be that their payment is perfectly legitimate. In that event they ought to be treated as entirely confidential but the Committee does not want to be chargeable with any neglect of duty to follow lines of that kind and they want to put it right up to the executors and see whether the executors are willing. Their relation is merely that of the law — whether they are willing to assist the Committee in making those inquiries.

Senator Thompson.— To carry out my idea I assume that Mr. Freedman did not leave his estate so these matters were separated and you not knowing sometimes what the object of the Committee is cannot separate them for it. A. In any relation of that kind, it is a trustee relation.

Senator Thompson.— That is what we are, you know? A. I should be controlled by the advice of counsel in that.

Senator Thompson.— It is not any personal matter with us. A. I should be controlled by advice of counsel in that.

Mr. Moss.— Then Mr. Oakman, I think it is right for you to be advised by counsel on those things but I think some of the friends have not quite understood that. I am specifying the Jacques S. Cohen matter. I simply give that to you as an illustration of the sort of things that we think it is our duty to look into and now you are advised on the general line that we want to go on.

Senator Thompson.— Mr. Oakman, I understand that you have some papers that might bear upon the dual subway contracts or the negotiations that led up to them, or the transactions in regard to the Brooklyn Rapid Transit or any of the city officers or the

Public Service Commission or their relations with the Hudson Tubes so-called, and that you have possession of those papers? What they were I do not know, but they were some papers that had a bearing on these transactions, or the negotiations or the matters subject to our inquiry. Have you any such papers? A. No. I already told you Mr. Chairman on a previous occasion that I had no papers nor information of any kind of that sort. The only papers I have at all were simply unimportant papers. I have nothing like that at all.

Senator Thompson.—Did you have such papers in your possession sometime since the first of last January? A. No. I have not destroyed a paper since the first of last January.

Q. I did not mean that. Perhaps somebody else has them now? A. No.

Q. I did not mean to intimate that. I thought perhaps somebody else might have them now. A. No. I have had no papers of that kind.

Q. I was very directly informed that you had and that is the reason why I made that inquiry. Somebody else knows better than I do, but I am not acquainted with that somebody.

Q. You were acquainted with Morgan at the time of these transactions? Did you participate in the negotiations in relation to the dual contracts? A. No.

Q. Did you, with the Public Service Commission? A. I attended public meetings of the Public Service Commission.

Q. Did you have any informal conferences? A. I do not definitely recollect.

Q. With the Comptroller? A. No, I do not think I did.

Q. Did you have any meetings with the Comptroller on the subject? A. My recollection is—that is a number of years ago—that I never discussed the matter with the Comptroller.

Q. It is only three or four years ago, only 1913 or 1914. That is only a little while. A. My memory is not my strong point. No, I do not think I had any conferences with the Comptroller at all. My relation to it was that of a member of the Executive Committee who went up and attended the general discussions at the time of the meetings of the Public Service Commission.

Mr. Moss.—Did you ever have any conferences regarding the subway matters with James G. Cannon or with Henry Cannon.

A. No, I never did.

Q. Are you willing to tell the names of the corporation in which you and Mr. Freedman were co-directors or stockholders together?

A. Simply the Interborough Rapid Transit Company and some of the subsidiary companies, that is all. Mr. Freedman at one time was a director of some of the Hudson companies of which I was a director.

Q. What companies were those? A. They were the company that built the Hudson and Manhattan Railroad.

Q. Mr. Oakman, I have an impression that the proposition that was made by the Hudson Tube was simply a make weight to assist the Interborough or possibly the B. R. T. too, to break the deadlock and force matters with the Public Service Commission here. A. No, I do not think it was that.

Q. Inasmuch as things had come to a deadlock I think it was rather an ambitious suggestion on the part of the Hudson and Manhattan Railroad. Do you think that the Hudson and Manhattan Railroad thought that it had a chance to get in between these other railroads? A. Make a try at it.

Q. Where had it thought it would would raise the money? A. Well, it felt confident that the money could be raised if the proposition panned out. As I tell you I had not discussed it prior to the proposition before it was made was between the Hudson and Manhattan railroad executives.

Q. I know, but the Hudson Tube proposition was not as large a proposition as the dual subway turned out to be or as the triborough turned out to be. Now, was it not the idea that the Hudson Tube might break in there and be the center around which the B. R. T. and the Interborough might be brought, so that the three interests would cohere in something that the City would take? A. No. It was limited to the proposition.

Q. But there was no real belief in the Hudson Tube Company that the City authorities would content themselves with as narrow a proposition as you put forward there? A. That was up to them.

Q. I know it, but I have always felt that you knew what you were about. Now, I am trying to open my mind to you. That is

the impression that was made upon me by the testimony that was given before us. That just at that time when things were uncertain the proposition of the Hudson Tube Co. was thrust in, a modest proposition so far as territory was concerned, probably with the idea that a new point of interest would be created around that, the point would be the Interborough and the B. R. T. A. Of course, all those things were possibilities but at the same time it was just simply formulated to the extent that it was submitted.

Q. But you did not consider the proposition so antagonistic to the B. R. T. that it would call upon you to resign? A. No, I did not.

Q. You were called upon to resign when the Tubes went into Sixth Avenue, but you saw nothing in this proposition that was so inimical to the B. R. T. that made you want to resign or separate yourself from any business interests you had with Mr. Freedman? A. Yes.

Senator Thompson.—How long were you a director of the Hudson and Manhattan Railroad Company? A. Since 1905.

Q. With the B. R. T.? A. As long as that or longer.

Q. Had you any previous railroad experience? A. Yes, I had been in a lot of things as director.

Q. Have you had any experience in operating railroads? A. Yes. I started in as a division superintendent of the Lackawanna Railroad and went through a variety of positions on various railroads.

Q. That is really your vocation then? A. It has been until I switched off on other things.

Q. Can you come in at 11:30 tomorrow? A. Yes. I can.

Q. I want to apologize to you Mr. Oakman.

MR. MOMAND testifies.

Examination by Mr. Moss:

Q. I want to ask you Mr. Momand what experience you have had in examining figures and the rate of companies supplying illumination and power. A. Considerable. In fact practically continuous during the time I have been engaged in this line of work for the last twelve years.

Q. Have you not at the request of the Committee made an examination of the report of the Edison Company to the Public Service Commission for the year 1914. A. I have.

Q. Well, now about electric current, so far as manufacturing and distributing electric current, is it not much the same as the gas? A. Practically the same. Both are manufactured at central stations or works and distributed in the same manner. Gas through pipes underground.

Q. It calls for a central station and distribution from that station to customers? A. Yes.

Q. And the current is distributed from central stations or works over wires, some underground and some overhead? And the amount that is supplied to customers is determined by meters? A. By meters in both cases.

Q. In the matter of gas; gas is sold to the public in the Borough of Manhattan at a uniform price? A. Yes, of 80 cents a thousand feet.

Q. And that is served to gas customers at a uniform rate? Whether they buy much or little? A. Yes, irrespective of the quantity used.

Q. How is it with regard to electricity? A. The New York Edison Company has a widely varying schedule of prices. I might say that whatever justification there might have been in the beginning of the industry for a varying schedule of prices based on varying consumption, it has long since ceased to exist by reason of the enormous demand for electric current for light and power and heating purposes, which has brought electricity into the same class as gas in that respect. It is used so universally.

Q. And as the years have gone on the demands for electricity are not so much at one particular hour as they used to be? A. No. The demands have become so varied that the load is more continuous during the 24 hours, than it was at the various stages of the industry. All of which goes to make cheaper cost for distributing.

Q. Will you state the varying rates that are charged by the Edison Company. A. The present rates?

Q. The rates before May 1, 1915 — and the rates after May 1, 1915. There was a reduction in the rates was there not? A.

Yes, on May 1, 1915. That was the result of an investigation that lasted over several years on the complaint of the consumer that the rates were too high.

Q. Please give the rates first as they were before May 1, 1915, and immediately succeeding that the rates after the improvements or reductions had been made by the Public Service Commission.

A. The rates prior to May 1, 1915, was for the first 250 kilowatt hours, 10 cents per kilowatt hour, the next 250 kilowatt hours 9 cents, the next 250, 8 cents; the next 250, 7 cents, the next 500 kilowatt hours, 5 cents.

Q. Now the new rates. A. The new rates which became effective May 1, 1915, were changed making the first 900 kilowatt hours 8 cents, the next 100 7 cents, the next 200 hours 6 cents, the next 300 hours 5 cents. The next 400 hours $4\frac{1}{2}$ cents and an excess of 1900 kilos $4\frac{1}{2}$ cents.

Q. That has been supposed generally to be a reduction of 2 cents per kilowatt hour? But it is not really so? A. It is not so.

Q. Because under the old rates the first division was 250 and the next 250 and the next 250 and those prices ranged from ten cents down to seven cents, while under the new rate the first division consists of 900 kilowatt hours at the rate of 8 cents, the next of 1,100 at the rate of 7 cents so the reduction is not two cents. A. No.

Q. Are you able to tell us just what it was? A. Exactly. At the old rate 1,000 kilowatt hours cost eight and one-half cents a kilowatt hour.

Q. Under the new rate how much would it cost? A. In other words \$85. Now that carried the renewal of bulbs which is estimated at $\frac{1}{2}$ cents per kilowatt hour on that basis. You understand that \$85 carried renewal charges of bulbs. Now under the new rate 1,000 kilowatt hours cost \$75 and the consumers have to supply their own bulbs. The New York Edison Company withdrew that free bulb service, renewal service in making these changes. That is based on the rate of $\frac{1}{2}$ cents a hour and would make under the new rate a cost of \$80 as against \$85 under the old rate which is a very slight reduction, a reduction of half a cent a kilowatt hour. It was widely advertised that the reduction was in effect, that the saving was two cents per kilowatt hour.

Q. It is only a half a cent. Your statement of this so far as I know is the first statement which shows how exaggerated the claim of reduction was when the rate was reduced from 10 cents to 8 cents. I have not seen the report of the New York Edison Company for the year 1915, but I dare say that you will find that the gross income of the New York Edison Company was larger last year at the reduced rate than it was at the old rate.

Q. The gross rate has helped to swell its income? A. Yes.

Senator Thompson.—At this inquiry Commissioner Maltbie at the conclusion of the case told us about a real reduction of six cents and on conference with other commissioners who had not heard the case they would not confirm it.

Mr. Moss.—Now that you have given those published rates are there not unpublished prices? A. Yes.

Q. In New York — A. The New York Edison Company sells at unpublished prices as low as \$.0051 per kilowatt hour and by the way I want to say that that price is based on a yearly consumption and not on the monthly consumption at the price of 8 cents per kilowatt hour to the public. The New York Edison Company also sold current in 1914 to others as low as \$.0052 per kilowatt hour.

Q. What opinion have you Mr. Monand regarding the discrimination made in rates? Both as to whether they are necessary and as to their result upon the community? A. The discrimination in the rates of the New York Edison Company are absolutely unjustifiable in the cases which I have examined, for merely relative companies and distributions. Take the Third Avenue Railway Company for example, to which the New York Edison Company sold last year about 20 per cent. of its entire products. That is to say they sold to The Third Avenue Railway Company 125,-023,710 kilowatts of current during the year 1914 at .5248 cents per kilowatt hour.

Q. Was the effect of that discrimination upon the community? A. The effect is to increase the cost to the general public. This current is undoubtedly, as the figures show, furnished to the Third Avenue Railroad Company at a non-remunerative price.

Q. The small consumer is putting in most of the money, is he not? A. He is paying for the service which is being rendered to

the Third Avenue Railway Company by the New York Edison Company.

Q. And when one business man get a lower rate of service than another business man, it gives him an unfair advantage over his competitor, does it not? A. Unquestionably.

Q. Similar in principle to rebating. A. Exactly. That is the point I want to explain to you. In my estimation that Third Avenue case is nothing rebate. The records of the New York Edison Company show it too at least on the power plant that was constructed by the Third Avenue Railway Company a number of years ago which the New York Edison Company does not operate. The plant representing a very large investment is idle and has been for years and they kept the plant closed. They furnish the Third Avenue Railroad Company current from the two water side stations where practically the entire current is produced by the New York Edison Company. That lease in my estimation is nothing but a rebate. For some reason the New York Edison Company does not want the Third Avenue Railroad Company to produce electric current and they sought means of closing it up, shutting up the plant.

Q. Well, do you find anything similar to that in furnishing of power to any of the traction companies of the present day? A. In New York City?

Q. Yes, in Manhattan. A. No. No, that is the only incident of that kind. I find a similar case in one of the large mercantile houses. That was in the case of Gimbel Bros., a large department store here in the City. I find in the New York Edison Company reports where they pay \$10,000 rent for a sub-station which is practically unused. It is enormous rent. In my estimation that is nothing but rebate. I think that by investigation you will find that the rental is purchase rebate, that there is no space used there to justify anything like that amount of rent being paid for. I might add in that regard that I had a witness investigate in Boston a few years ago in which a great many rebates of that character were exposed.

Q. We will now take up the charge by the Edison Company as shown by that report to the City. A. New York, the year 1914. The New York Edison Company collected from the City of New

York \$1,433,292.08 for electric current including the street lighting, and for that current the New York Edison Company charged the City prices from 3.24 to 7.30. That is from 3¼ cents to 7 and 31-100 cents per kilowatt hour. As an example of the varying prices there, for street lighting they charged for current furnished for arc lighting 3.28 cents per kilowatt hour and for current furnished for incandescent lighting 7131 cents per kilowatt hour or more than double the amount for that class of service.

Q. The report you examined showed charges varying from .53 of a cent to 10 cents per kilowatt hour, prior to May, 1915? A. It showed that it charged the City of New York its largest customer 10 cents per kilowatt hour for current for public buildings 7.3 cents for current for incandescent lamps and 3.28 cents for arc street lamps.

Senator Thompson.—How many kilowatts did they use for all three? A. 125,023,710 kilowatt hours.

Senator Thompson.—According to their report the cost of production for a kilowatt hour was more than two cents, was it not? A. Their report shows that the entire production for the year 1914 cost approximately 2 cents per kilowatt hour, delivering it to the consumer.

Senator Thompson.—They sold 125,000,000 at about half a cent, a little over half a cent.

MR. WALTER L. CONWELL, being duly sworn, testifies as follows:

Mr. Klein.—Mr. Conwell, you are an officer of the Ellicott Company? A. Yes.

Q. That company manufactures the booths on the subway of the City of New York? A. For the subway stations.

Q. The news-stand booths and candy booths? A. Yes.

Q. How many of those booths has the company sold to the Ward and Gow Company? A. I think there were about 80.

Q. What is the capital of your company? A. \$10,000.

Q. A hundred dollars is the par value of the stock? A. Yes.

Q. Who are the officers or directors? A. The officers and directors are the same. I am the president and a director, C. R. Ellicott is secretary and treasurer and William Wampler is vice-president and general manager.

Q. Is Mr. Frank Hedley of the Interborough a stockholder of your company? A. No.

Q. Was he at any time a stockholder of your company? A. No.

Q. Were any of the stockholders related to Mr. Hedley that you know of? A. No.

Q. Were you formerly in the employ of Westinghouse, Church and Curr? A. No, Westinghouse Manufacturing Co.

Q. Was Mr. Ellinghouse in that company? A. No.

Q. Do you know Mr. Hedley? A. Yes.

Q. How long have you known him? A. Probably ten years.

Q. Have you been engaged in business with him at any time? A. No.

Q. Are you interested in any other company besides the Ellcon Company? A. Yes, I am connected with the Safety Car Heating and Lighting Co.

Q. Any other company? A. Transportation Utility Co.

Q. Any others? A. No.

Q. What is the Transportation Utility Co.? A. It is a selling company which was organized as the eastern selling agents for two western manufacturing concerns who manufactured railway supplies.

Q. Have you sold any supplies to the Interborough? A. Yes.

Q. What sort of supplies? A. Flooring for cars, that is composition flooring.

Q. Have you sold any other supplies to the Interborough itself for that company or for any other company? A. I think the Ellcon Company sold some porcelain enamel and metal trimmings for their cars.

Q. Anything else? A. Well, I think the first order they ever sold to the Interborough was for signs for the elevated cars.

Q. Did you ever sell any engines to the Interborough Company? A. I represented the Westinghouse Company that sold machines.

Q. Do you know how much the Westinghouse Company sold the Interborough? A. About a million dollars I guess.

Q. Were you the sales agent? A. I was a sales representative, yes.

Q. Did you do business with the Interborough through Mr. Hedley? A. No. Through their engineering department, Mr.

Scott. The order was finally closed through Mr. Hedley I believe, that is the first order.

Q. Have you had any business relations with Mr. Hedley? A. If by business relations you mean relations between the representative of a selling company and the representative of a purchasing company, yes. I have had business dealings with him.

Q. I mean personal business relations with him whereby you and he both profited? A. No.

Q. Did you ever divide any commissions with him? A. No.

Q. Was there competition for the sale of those engines? A. Very keen competition.

Q. Were you always the lowest bidder? A. That I could not tell you, not knowing anything about the other man's bid.

Q. What companies were usually in competition? A. The General Electric and Western Electric Companies.

Q. Any others? A. Allis-Chalmers.

Q. Did the General Electric or Allis-Chalmers ever get any? A. The General Electric Company received some of the orders for the engines.

Q. Did you bid on it? A. Yes.

Q. How much was the contract? A. I can't remember that off-hand.

Q. Did the Allis-Chalmers receive any orders? A. I think not.

Q. You have sold most of the turbine engines to the Interborough have you not? A. It depends on what time you take into consideration. I have sold four turbines for the 74th Street Power Station. I sold none to 59th Street and think there must have been orders placed for 59th Street with the General Electric Company, including some exhaust turbines which were both some years ago.

Q. Have you been doing business with the Interborough for the last ten years? Since you knew Mr. Hedley? A. Yes.

Q. What was approximately the total of sales you have made with the Interborough during the time? A. Well, it would only be an approximation but I should say two or three million dollars.

Q. The profit was liberal, was it not? A. I do not know anything about that. I was sales representative for companies like

the Westinghouse Electric and Westinghouse Machine Company whose profits I know nothing about.

Mr. Moss.—Do you know Mr. Gillespie? A. No.

Mr. Klein.—Are you related to Mr. Hedley in any way? A. No.

Q. Has Mr. Hedley received any profit from the Elcon Company or any money, anything of value? A. No, sir.

Q. Or any relative of Mr. Hedley? A. No, sir.

Q. What is the average price of those booths? A. Well, that would also be a guess. I think those booths were sold to be the equivalent of booths of three sections each, if I remember correctly, \$50 apiece.

Q. Was there any competition? A. I could not tell you.

Q. Who ordered those booths from the Elcon Company? A. I believe the contract was with Ward and Gow.

Q. What was the total amount? A. 240 sections and as I say if I remember correctly it was about \$50 a section.

Q. That is \$7,000? A. It would be nearer \$6,000.

Q. Are you manufacturing — A. That would be \$12,000.

Q. Were you manufacturing any other material for the Ward and Gow Company? A. Not that I know of.

Q. Did that order come unsolicited? A. No, I knew that it was solicited by Mr. Wampler for several years. He put that sample booth at 23d Street several years ago and was working for the order and redesigning the booth over a long period of time to meet their requirements in the hope of getting a bid.

Q. You get these booths or rather these blue prints from the Interborough? A. No, from Ward and Gow.

Q. Do you know John J. Sinclair? A. Yes.

Q. Who is he in connection with the Elcon Company? A. He has no connection with the Elcon Company. He had when he was with the Westinghouse Electric Company. He was an assistant of mine in the sales department and is an engineer.

Q. Is he related to Mr. Hedley in any way? A. No.

Q. Is Mr. Hedley interested financially that you know of in any of the companies that you are interested in? A. No.

Q. Does the Safety Car Heating and Lighting Company do business with the Interborough? A. No.

Q. Does the Pinch Compressing Company? A. No.

Mr. Moss.— We will resume, Mr. Momand.

Resuming your testimony, Mr. Momand.

Q. If the Consolidated Gas Company, for instance, should charge the people of New York by the same ratio as the discriminating charges give us some idea of the result? A. The official charge for gas users on the same basis and varying prices for gas as the New York Edison Company charges for electric current, the prices would vary from six to nineteen times as much, for example, to the City of New York as the charge to the general public.

Q. Take the general public as one that charged New York City for some current it would be six up to nineteen. A. In other words they would be charging the City \$4.00 to about 10,000 cubic feet of gas.

Q. If course that could not be tolerated. A. No.

Q. Well, why is it tolerated with regard to the electric current? A. There was no movement to rectify the method of charging for electric current, which as I have stated, whatever cause might have existed at the beginning of the industry when the demand was comparatively limited has long since ceased and at the present time the demand for current is so enormous.

Q. It can give the Edison Company great power over business? A. Absolutely. According to the Edison Company's own figures, which were based upon almost extravagant conduct of their business in every department. They charged up to the year 1915 over \$600,000 for advertising.

Q. Why do they need to advertise? A. I can't conceive. They have a monopoly. You can't get current in Manhattan except through the Edison Company except through a very limited extent where the United Electric Light and Power Company supply a small part.

Q. Can you give us some other instance of the extravagant conduct of the business of the New York Edison Company? A. I find from the report here on page 8, line 7. It states that the total

number of stockholders of the New York Edison Company at the close of the year 1914 was fifteen, and the total number of shares owned by those members was \$501,534 and Lewis B. Gawtry, Vice-President of the Consolidated Gas Company voted \$501,511 shares of the New York Edison Company stock at the meeting on February 11, 1915, held at 55 Duane Street, New York City. That was the meeting for election of officers of the New York Edison Company, Nicholas F. Brady voted 11 shares, J. W. Lieb, Jr., 10 shares, Thomas E. Murray 1 share.

I find here under the heading of securities, pages 1, 2 and 3 that the amount of stock I have just stated there has been voted by those gentlemen comprises the entire amount of stock issued and outstanding up to that date.

Senator Thompson.—Do not misunderstand me that I do not think that report was made from this company to the Public Service Commission is a good thing. They complicate it so that the Public Service Commission cannot understand it nor the rest of us. It ought not to be necessary to look ten or fifteen minutes to see who the stockholders are. Here it is all mixed up and we get all sorts of answers except the one we are looking for. Who owns it? Who runs it? A. I find here on page 8, line 41 in the report that the Consolidated Gas Company of New York, that there were 388,417 shares of New York Edison Company stock in the name of the Consolidated Gas Company of New York on February 11, 1913.

Q. Will you take your Exhibit A-1? Now. Mr. Momand, I want you to tell us about the product and sale of electric current for the year 1914. A. The New York Edison Company's report shows that there was generated at the water side station in the year 1914 294,129,988 kilowatt hours electric current; Kingsbridge Station 1,073,400 kilowatt hours of current, Duane Street Station 663,763 kilowatt hours; 140 Street, Bronx Station 3,578, making a total production of all of our stations of 648,432,256 kilowatt hours at a total cost of \$2 815,097.39.

Q. Now, on that report, what did that cost per kilowatt hour? A. Less than half a cent. Exactly .4268 cents. They purchased from the United Electric Light and Power Company \$62,876,908 kilowatt hours at a cost of \$723,780.10, which is at the rate of

1.15 cents per kilowatt hour. They purchased also from the United Electric Light and Power Company for that year 1,800,687 kilowatt hours at a cost of \$18,334.40 at the rate of 5.34 cents per kilowatt hour.

Q. Do you know why that charge is so much larger than the other one? A. That, I understand, is current delivered to the consumer.

Q. Yes, where the United Electric Light and Power Company deliver to the consumer? A. Yes and charge it to the New York Edison Company.

Q. And in the other cases they deliver it to a generating station. A. At the switch board.

Q. Now, this power, a vast amount of it was made at less than one-half cent? A. Per kilowatt hour, yes.

Q. I want to see what they charged for it. A. They charged 125,458 general customers at the rate of 7.90 cents per kilowatt hour.

Q. Now, take the total sale — A. Now, under what they call their wholesale rate they sold 2,414,566 kilowatt hours to 563 consumers for \$4,019, 097.40 or at the rate of 3.67 per kilowatt hour.

Q. Now, power — A. I would like to get into the record there show 125,456 to the general consumers. Which was 191,912.175 kilowatt hours for which the New York Edison Company received \$14,378,875.75.

Q. Now, take the power customers — A. They had 14,411 power consumers consumed 22,109,288 kilowatt hours for which the Edison Company received \$1,888,095.65 or at the rate of 8.56. They had 308 storage battery consumers to whom they sold \$4,256,942 kilowatt hours at the rate of 4.07 cents per kilowatt hours, a little over 4 cents. They have what they call a breakdown service in the event that it is required. In other words being ready for delivery in case of breakdown of private plants. 381 consumers under that head 3,168,000 kilowatt hours of current at the cost of \$153,151.50 or 7.19 cents, a little over seven cents per kilowatt hour. Then the final items of 49 consumers at the General Electric Company show that was held in the City that year, consumers of 6,016 kilowatt hours \$148.48.

Q. Now, you can give me the total. A. That makes a total of 140,943 consumers to whom current was sold amounting to 312,657,686 kilowatt hours in the aggregate to that number of customers, for which the company received \$10,615,675.11.

Q. Now, we come to the municipality. A. It is sufficient to say I think that the street lighting service in Manhattan and the Bronx on the arc system was 3.88 cents per kilowatt hour; the incandescent at 7.30 per kilowatt hour, lighting of buildings at 6.50; lighting in wholesale buildings was at 3.24, high pressure at 3.83 cents, so under that subdivision of the municipality. Manhattan and Bronx you have \$6,413,022 kilowatt hours costing \$1,453,293 cents at the average price of 3.94 cents per kilowatt hour.

Q. Now you have the United States Government Lighting and power at 6.11, you have the Third Avenue service taking 125,023,710 kilowatt hours paying \$653,201.39 for it at the price of .3248 cents and other railroads supplied with 8,248 hours paying \$19,508 for it at the average price of one cent. A. I find too that they supplied power or light to other companies, the United Electric Light & Power Company, the Yonkers Electric Light & Power Company, New York & Queens Electric Light & Power Company, Westchester Lighting Company.

Q. And there the prices vary, Mr. Momand? A. Very considerably. The United Electric pays \$334,507.94, Yonkers gets \$156,548.65 cents worth and pays 1.20 cents per kilowatt hour, New York & Queens gets \$44,216.65 worth and pays .53 cents per kilowatt hour, Westchester gets \$30,669 worth and pays 1.61 per kilowatt hour. The average to those electric light companies is 1.707 cents. I find here the New York Aqueduct gets \$249,821.10 worth which has an average price of 1.68 cents per kilowatt hour.

Q. Now, Mr. Momand here is something interesting. The total current sold, you tell us is 534,000,000. The price collected therefor is? A. The amount received for that current was \$23,539,680.90. The average price charged per kilowatt hour is 4.40 cents.

Q. Did you find that there was current produced and unaccounted for? A. Yes. 183,364,538 kilowatt hours. In brackets the state "indicated not actual."

Q. What does that mean? A. That means that they do not account for that amount of current during that year. It was either lost, strayed or stolen in some way.

Q. At an average price of 4.40 cents how much would that amount to? A. It would amount to about six million dollars, about five million, three hundred thousand dollars.

Q. You have no way that you could account for that? A. The New York Edison Company have connections with the Interborough Company, wire connections for exchanging, as they put it, in their report current in the event they need it. The Third Avenue Railroad Company have a connection but in the case of the Interborough Company they have this connection for delivering current to them or receiving current. Whether any of the current went through that channel of course, I cannot say. It is an unusually large amount of current to be accounted for as compared with the production. About 20 per cent. of the entire production is unaccounted for. It is almost inconceivable that that amount of current could be lost in the ordinary course of business.

Q. Reading your figures I see that the total operating revenue was \$? ? ? ? ? and the operating disbursements were \$13,007,230.20, leaving a net operating revenue of \$10,631,112.27. Then there is a non-operating revenue to be added to that of \$1,370,104.93 and so the total revenue, the total profit amounts to \$11,994,025.24 nearly one-half of the total operating revenue.

Senator Thompson.—That is after taking into account for instance, the cost of what they call a business wire, the cost of production is about \$3,000,000, the rest is operating disbursements, for interest on the money, for taxes, for uncollectable bills for rents, in other words all their overhead charges, carrying interest depreciation and amortization charges of all kinds all go into that \$13,700,000, showing that they make a profit on all kinds of operating expenses?

Q. As to the entire physical value of this company for about twenty years, it has been make up of excess earnings?

Senator Thompson.—Their report shows that they have a surplus of \$50,093,000.

Mr. Moss.—Total surplus December 31, 1914, \$50,093 715.30.

A. Yes, that is the amount of surplus.

Senator Thompson.— You will find in that report they have about \$20,000,000 investments in stocks of other concerns.

Mr. Moss.— Total fixed capital December 31, 1914, \$129,813,918.08. They have almost half of their capital represented by surplus. A. And I would like to state that that capital represents the plants at the valuation placed upon them on the books of the New York Edison Company and there is no question in my mind in going through the report and my familiarity with such matters that the actual plant of the New York Edison Company could be reproduced for not more than \$25,000,000. I would like to call the attention of the Committee to one item there. Page 4 the first item at the top. Exhibit 1. After applying all interest charges and dividends on the entire outstanding stock of the New York Edison Company in that case amounting to \$3,720,200, they charged up to account under the heading of a contingency reserve \$3,450,000.51. Now under that heading there was at the end of the year 1914, \$15,820,315.74, which is nothing but surplus. That amount was set aside by a special resolution of the Board of Directors based on a charge of one cent per kilowatt hours to the general consumer. Those 125,000 consumers who pay the high rate of 8 cents, that money is supposed to be used for renewal and contingency matters, when as a matter of fact as you find in the report all the items for improvements are charged up separately. This is simply a lump sum just turned in in case of an earthquake or something of that kind. Then after that item an item of surplus for the year of \$2,568,331.61, making the surplus at the close of the year 1914, \$32,183,035.26. Now that surplus added to the balance under this account of renewal and contingency reserve total makes a total of \$50,093,715.70, which represents surplus earnings held in the treasury of the New York Edison Company for which there is no proper use, the amount collected in excess of the amount necessary to pay all of their extravagant operations.

Q. You have noted many items where the expenses are extravagant? You mentioned one of them, can you tell us some others?
A. I have been so busy —

Q. We will hold this question open and if you will send in writing to me an answer to that question, I will put it in.

Mr. Moss.— I want you to detail some of those expenses which might be called siphon, by a siphon I mean something which draws money out. A. I will do that.

Q. I will put in your discussion "C" which is a discussion of street lamps. (See next page)

A. I was going to call your attention to the fact that all three commissioners, including Commissioner McCall, at the time they reduced the rate from 10 cents to 8 cents agreed that this account of renewals and contingency, the amount of money credited to that account was entirely too much and unnecessary and they all agreed also as you find by their reports that this reduction to 8 cents was not considered by them as being an adequate reduction, that they had given so much time to that reduction and they wanted to give some immediate relief to the consumers of New York City and they reduced the rate to 8 cents, but on top of reducing they made no provision which prohibited the New York Edison Company from changing the quantity under which a consumer would receive originally say 250 kilowatt hours, so really there was no reduction.

Q. I notice in Mr. Cramer's opinion in this Stadtlander case that he says the reduction from 10 cents to 8 cents was 20 per cent. It shows just the error he fell into. A. Exactly, it was announced —

Q. Now, calling the attention of the Committee to the importance of the discussion of fact in this report I put it in evidence and ask that it be spread upon the record. This is the opinion of the Commissioners in the Stadtlander case and other cases, in which particularly I call attention to the opinion of Mr. Maltbie. That goes carefully over facts which he has investigated, showing the over capitalization of the Edison Company and in one particular instance showing that its expense of capital is forty times from the original.

Mr. Moss.— I am informed by the chairman of the Committee that the Mayor of the City has not furnished any complaint against Mr. Klein and though he made an appointment for Mr. Thompson to call on him, did not keep the appointment and has declared that he is too busy to see Mr. Thompson.

Adjournment.

EXHIBIT C.

NEW YORK, *August 23, 1915.*

Showing the Extortionate Prices now being paid by the City of New York to the New York Edison Company for electric street lamps in the Boroughs of Manhattan and the Bronx, for the year 1915, the Gross Discrimination practised by the Edison Company against the City in the sale of current and the enormous profits to the Edison Company derived therefrom.

Size Lamp	K. W. hrs. yearly — 4000 hrs.	Current at .5248 cents per K. W. hr. (price 4 bulbs per year (guaranteed 1000 hours each)	Labor — Lighting Extinguishing etc.	*Total Cost Per Lamp Per Year.
100w	400	\$2.0992 (at .72)	\$2.50	\$7.4792
200w	800	4.1984 (at 1.44)	2.50	12.4384
300w	1200	6.2976 (at 2.16)	2.50	17.4376
400w	1600	8.3968 (at 2.88)	2.50	22.4168
500w	2000	10.4960 (at 3.24)	2.50	25.956
600w	2400	12.5952 (at 3.60)	2.50	29.5952
750w	3000	15.744 (at 4.00)	2.50	34.244

Contract Price Paid by the City and Enormous Profits to the Edison Company

Profit to the N. Y. Edison Co.

— per lamp per year (exclusive of

cost of transmitting current

to lamps and adminis-

tration charges.)

Contract Price

Paid by City

Per Lamp Per Year

Poles and Lampheads

Furnished by —

Size
Lamp

100w	N. Y. City.....	\$ 25.00	\$17.5208
200w	N. Y. City.....	45.00	32.5616
300w	Edison Co.....	70.00	52.5624
400w	Edison Co.....	77.00	54.5832
500w	Edison Co.....	85.00	59.044
600w	Edison Co.....	95.00	65.4048
750w	Edison Co.....	107.00	72.756

* The cost of current to the Edison Company at the plant switch-board is .4628 cent per k. w. hr. as shown by its report for the year 1914, filed with the Public Service Commission. The difference (.0620 cent per k. w. hr.) between this cost and the price the Edison Company sold current to the Third Avenue R. R. during that year, namely, .5248 cent per k. w. hr., amounts to \$378,227.99 on the total current generated (608,432,256 k. w. hrs.) by the Edison Company in 1914, a sum more than sufficient to cover the up-keep of the generating plant and pay 6 per cent. on the capital invested in the plant.

The amount properly chargeable, therefore, to the above cost per lamp per year, and to be deducted from the profits shown in the last column, for transmission of current from the generating plant to the lamps on the streets (the current for the lamps being taken from the street conduits supplying current to users generally throughout the City) is about two dollars for each 100 w. capacity in the case of each lamp, making the Edison Company's yearly profit on the 300 w. lamp, the one mostly used by the City, about \$46. No account is taken of interest charges or depreciation on the cost of poles and lampheads furnished by the N. Y. Edison Company for the reason that practically the entire cost of these has been recovered by the Edison Company each year since they were installed, many times over in most cases.

It will be seen, therefore, that the above prices charged the City of New York by the Edison Company for current for its public street lighting are highly extortionate and discriminating and should be largely reduced when the City comes to make next year's contract in December.

PUBLIC SERVICE COMMISSION — First District.

Opinions of cases of George Stadtlander and others and Julius Ewaldt and others against the New York Edison Company.

March 9, 1915.

In the Matter of the Complaint of GEORGE STADTLANDER AND OTHERS <i>against</i> THE NEW YORK EDISON COMPANY.	Case No. 1395
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In the Matter of the Complaint of JULIUS EWALDT AND OTHERS <i>against</i> THE NEW YORK EDISON COMPANY.	Case No. 1492
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WILLIAMS, Commissioner: This proceeding was started as a rate case as well as a case of discrimination. The petitions of the one hundred or more property owners required by No. 72 of the Public Service Commissions Law set forth, first, that the general rate of the New York Edison Company was unjust, unreasonable and excessive, and disproportionate to the proper cost of manufacturing and delivering of electricity in the Boroughs of Manhattan and The Bronx, and second, That the difference between the wholesale and the retail rate unjustly discriminated against the smaller consumers.

Copies of the complaint were justly served upon the New York Edison Company and the hearings seem to have been conducted along the lines provided for in §§ 71 and 72 of the Public Service Commissions Law, which provides for hearing upon the complaint in writing of the Mayor of the City, Trustees of the Village,

Town Board of a Town or of not less than one hundred customers or purchasers of gas or electricity.

Judge Cullen points out in his decision in the case of the Village of Saratoga Springs v. The Saratoga Gas Company (191 N. Y. 123), the limits prescribed by the law within which the Commission must act. First, the rate fixed must be reasonable. Second, the order must be based not on the ex parte statements of the officers, agents and inspectors of the Commission but (p. 147):

"Section 15 provides that on written complaint being made as to the illuminating power, purity, pressure or price of gas or electricity sold by any company, the Commission shall investigate the cause of complaint, and may by its agents and inspectors inspect the works system, plants and books of the company. Section 16 provides for the form of written complaint. Section 17 provides for a public hearing and that notice of the complaint shall be served on the corporation affected thereby, that both the complainants and the corporation shall have an opportunity to be heard and to be represented by counsel. By subdivision 10 of section 9 the Commission is given power to subpoena witnesses, take testimony and administer oaths in any proceeding or examination instituted before it or conducted by it under the provisions of the act. As we read the statute the investigation and report of agents and inspectors are to be made during the public hearing. This is made clear by section 18 which provides that orders made by the Commission on its own motion or without complaint shall be made only after reasonable notice to the corporation and reasonable opportunity to such corporation to prepare its defense or objection to the demands of the Commission. It is plain that no corporation could make its defense until it was clearly notified of what was charged against it and the proof to support such charge was given. While the Commission might not be bound by technical rules of evidence still it was plainly intended that the whole proceeding should assume a quasi-judicial aspect. This is necessarily so for the Appellate Division is empowered to review the order of the Commission, to review which requires something in the shape of a record of the proceedings of the Commission. The Commission being empowered to subpoena witnesses and take testimony, its inspectors or agents could be required to appear and verify any re-

ports made by them, or if we assume that such reports could be received in the first instance without verification, the inspectors or agents could be compelled to attend at the instance of either party and be examined as to the truth of the statements in their reports and their knowledge of the facts therein contained."

I think it is well to bear in mind that the statute when construed by Chief Judge Cullen, merely provided that the Commission, "within the limits prescribed by law, may fix the minimum of price of gas and electricity" and recourse had to be had to the common law to read the word "reasonable" into the statute.

But, since Judge Cullen's opinion, the statute has been amended and this amendment more definitely fixes the limits prescribed by law "by adding to the other restrictions under §§ 71 and 72 the following: In determining the price to be charged "for gas or electricity, the Commission may consider all the facts which in its judgment, have any bearing upon a proper determination of the question, although not set forth in the complaint and not within the allegations contained there, with due regard, among other things, to a reasonable average return upon capital actually expended, and to the necessity of making a reservation out of income for surplus and contingencies."

I refrain from characterizing the portion of the amendment which says in effect that the Commission may take into account things not embraced in the allegations contained in the complaint, inasmuch as I cannot conceive of any Commission making a determination upon facts which the corporation has affected has had no chance to controvert, and which are not contained in the record.

The New York Edison Company was formed in about 1901 by the consolidation of a number of other companies. The only entry upon its books which in any way would help in ascertaining the amount actually expended by those other companies upon which a reasonable return could be allowed is a blanket entry of May 1, 1901, "plant and property, \$78,000,000." It is conceded that no inventory and no appraisal were made before that amount was entered in the books and many books and papers of the companies which merged into the Edison Company that would tend to throw light from a bookkeeping standpoint upon the value of its plant and property are lost or mislaid.

At the present time the Commission is, by a system of monthly reports as to what new property goes into capital account, able to ascertain very readily the amount upon which a reasonable return should be allowed; and it is the claim of the respondent that, taking the amounts expended by the Edison Company since 1901 and the amount charged to plant and property on its books on May 1 of that year, there is no question but that the company is not now making more than a "reasonable average return" on this combined amount. But it is claimed upon the part of the petitioners, that this amount of \$78,000,000 was much too large.

Very recently the complainants have introduced certain extracts from testimony taken before the so-called Hughes Investigating Committee of the Legislature, and from certain certiorari proceedings to review tax assessments mentioned, therein, from which it is sought to show that the "plant and property" entry in the books of the company is much too large.

Concededly this testimony was filled with errors. The company was not allowed to appear by counsel or to cross-examine witnesses, and the evidence and report, while it may have been sufficient for a legislative investigation, to my mind is far from satisfying the limitations which the Legislature has put upon this Commission, when it requires it to determine and fix a value, and prescribes the method of procedure in ascertaining it.

Evidence introduced in behalf of the Merchants Association intervening would tend to show that not only the maximum rate but also the wholesale rate should be adjusted in order to fix scientifically a rate that would be fair to all classes of customers.

It must be admitted that the Edison Company, by its efficient management is now earning a large return — too large a return, I believe — upon the capital actually expended. Its net earnings in the year 1913 amount to \$7,902,732. On account of the general conditions existing in business the earnings have undoubtedly fallen off somewhat in 1914; the company claims about \$650,000. This would still leave net earnings of \$7,150,000 per year if the present rates were allowed to continue, or a return of six per cent. on about \$120,000,000 or five per cent. on \$145,000,000.

While Commissioner Maltbie, in his opinion allows but \$60,000,000 as the maximum amount upon which the company is

entitled to a fair return, in an action in the Supreme Court brought by minority stockholders, appraisers appointed by the court found the property of the Edison Illuminating Company was worth, in 1901, \$49,000,000. Added to this should be for additions 1901 to 1904, inclusive, \$9,717,000 and since 1904 to December, 1913, \$38,000,000, making a total of \$97,317,000.

The company also claims over \$10,000,000 value of assets of the New York Gas and Electric Company and the property represented by the first and consolidated mortgage bonds of the Illuminating Company. It also claims that there should be added increment in values of real estate and an increase in working capital required and other items, sufficient to bring the total to something over \$132,000,000.

I only give these figures to show the wide difference in the claims of the company and those considered by Commissioner Maltbie in his opinion.

The company also contends that no deduction should be made from the value of its property for so-called accrued depreciation and it claims that in fixing a reasonable rate the Commission would not be justified in assuming that the amount hereto set aside out of reasonable earnings should be provided for in the new rate in addition to a fair return upon the property.

The Public Service Commissions Law very wisely provides that, in determining reasonable rates, due regard shall be given to the necessity of making reservations out of income for surplus and contingencies, and I am of the opinion that a reserve for renewals and contingencies should be sufficient to cover the average annual cost of the renewals in plant and property, with a margin for contingencies in addition thereto. In view of the substantial fund already reserved for contingencies of this company, it seems to me that the amount set aside for renewals and contingencies each year should be reduced.

I think that there can be little doubt that the Commission is justified in making an order for some reduction of water. I do not agree with Commissioner Maltbie that there should be a "meter charge." That would mean that the small consumer would continue to pay ten cents per kw. hour for his current while those more able to pay would get their current at a much reduced rate.

It is estimated that there are twenty-eight thousand customers of the Edison Company who would never get any benefit if a "meter charge" were imposed. It is admitted that this meter charge would allow the company to take \$1,000,000 a year from its customers and it appears that this would come for the most part, from those who can least afford it. About 95,000 or ninety per cent. of all the Edison Company's customers are paying the maximum rate of 10 cents per kw. hour and $9\frac{1}{2}$ cents for power.

If this maximum light rate were reduced at once to say 8 cents for the first thousand kw. hours per month, every one of those small consumers as well as the fairly large consumer, shop or factory would benefit greatly. The flat-dweller whose bill is now \$1.50 would pay \$1.20 and the shopkeeper using 350 kw. per month would pay \$30 instead of \$25.

The power rates should also be reduced to 8 cents for the first 500 kw. hours and then reduced as the current consumed increases. I think the wholesale rate should be reduced to 3 cents where it now stops in view of rates given to automobile, storage battery, subway work, etc., where the same amount of current is consumed.

Roughly speaking, this reduction, taking the 1914 figures, would mean a saving of about \$2,000,000 a year to the customers of the Edison Company, and of course a similar reduction would have to be made by the United Electric Light and Power Company in its rates, as in many streets the mains of both companies are laid.

This \$2,000,000 reduction would still leave the company \$5,150,000 per year net, based upon the 1914 business, or \$5,800,000 net when business is as good as it was in 1913. This would be six per cent. on nearly \$100,000,000 which it seems to me from the evidence must certainly cover the value of the "capital actually expended in the enterprise."

I recommend, therefore, that the company be ordered to prepare and put into effect a new schedule of rates based upon the maximum charge of 8 cents per kw. hour per month. In accordance with this opinion, no rate now in existence for large consumers, however, to be increased in any manner.

Another feature of the rate schedule at present in force seems to me works a discrimination against many of the users of elec-

tricity in this city. Owners and agents of apartment houses and loft buildings secure current at the wholesale rate (5c.) and detail it to their tenants at 10 cents per kw. hour. The electric light companies install separate meters for each tenant and read the meters. All the agent or owner has to do for his five cents per kw. profit or more is to make out and collect the bills. As the arrangement between the landlord and his tenant is a matter which is in the form of a contract (generally in the lease) I think it is clear that we have no right to interfere. The tenant may pay the landlord anything he wishes, but I think that if the landlord wants to take advantage of the wholesale rate and retail it out to his tenants, he should furnish the meters and read them, as well as collect the bills. In other words, that but one meter should be furnished or read for each wholesale customer of this class. This, with the reduction in rate which I have recommended and which reduction the landlord will necessarily have to meet, I believe will largely do away with the causes of complaint in cases of this kind.

Dated March 5th, 1915.

GEORGE V. S. WILLIAMS,

Commissioner.

Stadtlander vs. New York Edison Company.

Ewoldt vs. Same. Cases 1395 and 1492.

McCall, Commissioner.—The long delay that would necessarily be involved in an appraisal or valuation of the property of this Company is a deterrent from insisting upon rate as perhaps the only method of reaching any positive solution in this rate question; and a further justification for not insisting upon it is to be found in the fact that in our judgment we have sufficient proof before us to justify an order giving immediate relief from conditions that demonstrate that the earnings of the Company are away beyond what would be justified as a reasonable average return by the most favorable finding that could possibly be reached in the Company's favor as to capital actually expended, etc., by any process adopted to ascertain same. I cannot bring myself into consonance with the view or results expressed and deduced by Commissioner Maltbie because he accepts for his premise or basis in his reasoning and conclusions as to value of this company's property \$19,000,000 the amount that was fixed by a joint committee which

was created to investigate gas and electric rates in the City of New York in the year 1905, plussed by about \$3,000,000 the results of the committee's action have not stood the test of judicial analysis and they have even by their own acts in legislation based upon their report in the fixing of the rate at ten cents per kw. hour shown that they must have regarded that the valuation they asserted should have been much larger. I do not enter into more complete or detailed analysis of this matter because of the fact that Commissioner Williams has covered same, and his results are in harmony with my own views. I agree with him also on the question of "meter charge" for the reasons he sets forth, to wit: that the relief in any reduction of rates by adding the meter charges would in so far as the small consumer is concerned be nullified. I am particularly impressed with his suggestion which seems to me will afford a panacea for the evil that has grown to large proportions where the landlord or agent of these large houses by getting the current from the company sells it out as a sort of a middleman to his tenants, and usually at higher rates, and benefiting personally by crediting the tenants' consumption to his own use and getting the advantage of wholesale rates, which never inure to the tenants' welfare. I am constrained by his reasoning on the reduction of rates to accept the conclusion he has reached because he seems to have fairly and justly treated the entire subject and while it is (without the element heretofore referred to) somewhat of the nature of an experiment it will bring immediate relief and the experience that subsequent action under these rates will afford us will be helpful to a complete disposition of the question.

March 9, 1915.

EDWARD E. McCALL,
Commissioner.

Stadtlander	}	Cases Nos. 1395	
<i>vs.</i>			
New York Edison Company.			
<hr/>		}	and 1492.
Ewoldt			
<i>vs.</i>			
Same.			

Cram, Commissioner.—I concur with the result arrived at in the opinion of Commissioner Williams, that the rate should be reduced from ten cents to eight cents, a reduction of twenty per cent.

In my opinion the valuation made for political purposes by a partisan committee of the Legislature is not a proper basis for the valuation of the property of this company and should be disregarded.

On the evidence I consider the capital actually expended in the enterprise about \$97,000,000.

The reduction ordered means an immediate saving of more than 2,000,000 of dollars a year to the customers of the company. After this reduction the company should net more than six per cent. which is a fair return upon the capital actually expended.

March 9, 1915.

J. SERGEANT CRAM.

(Same Cases.)

Maltbie, Commissioner.—The former of these two cases (Case No. 1395) was instituted in the latter part of 1911 by the filing of a petition or complaint signed by more than 100 customers of the New York Edison Company residing in the boroughs of Manhattan and the Bronx. These complainants authorized a joint committee of certain engineering societies and associations to ap-

pear for them, and represent them in the prosecution of their complaint. Several months afterward the latter proceeding (Case 1492) was instituted by the filing of a complaint signed by more than 100 customers of the same company residing in the same boroughs. Those complainants authorized the Isolated Plant Publishing Company to appear for and represent them in the proceeding. The complaints in these cases were similar in character; and since the beginning of the latter proceeding, the two cases have been heard together.

Prior to the enactment of the Public Service Commissions Law in 1907 the rates of electrical supply companies were not required to be published or filed in any public office for the information of consumers and the general public. Rates and service contracts were often considered and treated by the companies and by their customers as matters of merely private concern; they were subjects for secret negotiation, and the terms of contracts between a company and its customers were often unknown except to the parties making them. Of course, such a practice would easily facilitate favoritism and discrimination between different consumers or classes of consumers.

As the result of a general investigation of the rates and practices of electrical corporations, the Commission, on December 18, 1908, adopted an order (Case No. 832) prohibiting all discrimination, special rates, rebates, unreasonable preference, and the extension to any consumer of any privileges or facilities not extended to all under similar conditions. On the same date for the purpose of assisting in the enforcement of this order and of securing full publicity of all charges and contract provisions, the Commission adopted another order (Case No. 823) requiring every electrical corporation to file with the Commission and keep open for public inspection printed schedules of all rates and forms of contract relating to its service at least thirty days before such schedules should go into effect. (See 1 P. S. C. R. [1st District N. Y.], 377). In compliance with this latter order as slightly modified by a later order the New York Edison filed with the Commission its schedule of rates, including forms of contract and rules and regulations pertaining to its service. This schedule has

been changed from time to time by the filing of supplemental schedules.

In 1910 the Public Service Commissions Law was amended by virtually incorporating in the statute the order in Case No. 822 and provision was made for the posting, filing and publication of rate schedules, etc.

Nature of Complaints.

The petition in Case 1385 refers to the schedule of rates filed with the Commission by the New York Edison Company effective July 1, 1911, and alleges:

1. That the charges demanded by the company are unjust and unreasonable.

2. That special rates, lower than the rates paid by the complainants, are given to certain classes of consumers other than the complainants, although the service rendered to such consumers and to the complainants and all other consumers is "like and contemporaneous and rendered under the same or substantially similar conditions or circumstances."

3. The special rates, less than 4 cents per kw. hour are given to certain consumers; that such rates constitute "an undue and unreasonable preference or advantage" to said customers; and that all other consumers, including the complainants, are thereby subjected to "an undue and unreasonable prejudice and disadvantage."

Various practices and other provisions of the schedule of rates are mentioned specifically as being illegal. These will be set forth in detail when we come to discuss them.

The complainants ask the Commission to make an investigation of the company's methods and the costs of manufacturing and distributing electricity, as well as the practices or charges of the company followed by it in obtaining contracts with customers and to order such changes as may be found just and reasonable. Broadly speaking, it is the claim of these complainants (1) that the average price received by the New York Edison Company for electricity is higher than is necessary to afford an adequate return on the company's investment, (2) that the large consumers pay less than the cost of the service they receive and (3) that the

small or retail consumers, who pay approximately 10 cents per kw. hour pay more than the cost of such service.

In the petition filed in Case No. 1493 the allegations are substantially the same, and similar action on the part of the Commission is requested. It is also specifically alleged that the prices charged by the defendant company for electricity furnished to other electric companies and to railroads are unreasonably low, constituting an undue preference to such electric companies and railroads and an unjust discrimination against the complainants.

Powers of Commission.

The provisions of the Public Service Commissions Law under which the petitions of the complainants have been submitted or which are applicable to the pending cases are as follows:

"65. Safe and adequate service; just and reasonable charges; unjust discrimination; unreasonable preference. 1. Every gas corporation, every electrical corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such gas corporation, electrical corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the Commission having jurisdiction. Every unjust or unreasonable charge made or demanded for gas, electricity or any such service, or in connection therewith, or in excess of that allowed by law or by the order of the Commission is prohibited.

2. No gas corporation, electrical corporation or municipality shall directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas or electricity or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

6. No gas corporation, electrical corporation or municipality

shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * *

66. Whenever the commission shall be of opinion after a hearing had upon its own motion or upon complaint that the rates or charges or the acts or regulations of any such person, corporation or municipality are unjust, unreasonable, unjustly discriminatory, or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable charges thereafter to be in force for the service to be furnished notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed. * * *

71. Complaints as to quality and price of gas and electricity; investigation by commission; forms of complaints: Upon the complaint in writing of the mayor of a city, the trustees of a village or the town board of a town in which a person or corporation is authorized to manufacture, sell or supply gas or electricity for heat, light or power, or upon the complaint in writing of not less than one hundred customers or purchasers of such has no electricity in cities of the first and second class, or of not less than fifty in cities of the third class, or of not less than twenty-five elsewhere or upon complaint of a gas corporation or electrical corporation supplying said gas or electricity as to the illuminating power, purity, pressure or price of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered in such municipality, the proper commission shall investigate as to the cause for such complaint. When such complaint is made the Commission may, by its agents, examiners and inspectors, inspect the works, system, plant, devices, appliances, and methods used by such person or corporation in manufacturing, transmitting and supplying such gas or electricity. The form and contents of complaints made as provided in this section shall be prescribed by the Commission. Such complaints shall be signed by the officers, or

by the customers, purchasers or subscribers making them, who must add to their signature their places of residence by street and number, if any.

72. Notice and hearing; order fixing price of gas or electricity, or requiring improvement. Before proceeding under a complaint presented as provided in section seventy-one, the Commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the Commission as to any matter of which complaint may be made, as provided in seventy-one of this chapter, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it. After a hearing and after such an investigation as shall have been made by the Commission or its officers, agents, examiners or inspectors, the Commission within lawful limits may, by order, fix the maximum price of gas or electricity not exceeding that fixed by statute to be charged by such corporation or person for the service to be furnished; and may order such improvement in the manufacture, distribution or supply of gas in the manufacture, transmission or supply of electricity, or in the methods employed by such person or corporation, as will, in its judgment, be adequate, just and reasonable. The price fixed by the Commission under this section or under subdivision five of section sixty-six shall be the maximum price to be charged by such person, corporation or municipality for gas or electricity for the service to be furnished within the territory and for a period to be fixed by the Commission in the order not exceeding three years except in the case of a sliding scale, and thereafter until the Commission shall, upon its own motion or upon the complaint of any corporation, person or municipality interested, fix a higher or lower maximum price of gas or electricity to be thereafter charged. In determining the price to be charged for gas or electricity the Commission may consider all the facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable aver-

age return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."

Questions Already Decided.

In the conduct of the hearings, great latitude has been allowed the complainants in the introduction of evidence. The testimony has covered a wide field and the record contains about 1800 printed pages and over 100 exhibits. Before the investigation of all matters as promptly as possible and as it was apparent that the investigation of the question of rates would be long and complex, an intermediate opinion dealing with these particular matters was adopted by the Commission on December 20, 1912. (See 3 P. S. C. R. [1st Dist. N. Y.], 490.)

Of the three matters considered in that opinion, two related to certain alleged unlawful discrimination which had been made by the Edison Company in favor of two of its wholesale consumers. It was found that the contracts made with these consumers were in some respects different from the forms of contracts on file with the Commission for use by consumers furnished to the Edison Company certain space in the consumer's building for use of the company, that the rental paid was unreasonably high, and was made to depend upon the quantity of electricity used by the consumer and that the arrangement was unlawful and discriminatory and in fact a rebate.

The third matter dealt with in the preliminary opinion was alleged discrimination by the company in favor of a wholesale consumer because of service contract containing a "conjunctional service" rider which did not follow the form of rider on file with the Commission. The evidence, however, indicated that this consumer was entitled to the privilege of conjunctional service and that the rider in question did not amount to a discrimination but it was recommended that in the future the wording of all contracts follow strictly the forms on file with the Commission.

No order was made in regard to these matters, the Commission having the assurance of the company that unlawful practices would be promptly discontinued. In one matter, the company established a new rate, permitting a consumer to have a reduction of

one-half cent per kw. hr. from the regular schedule of charges where a substation was located in his building even though rental was paid for the space. Complaint being made against this discount, the Commission found the rate unjust and unreasonable and ordered it to be discontinued. (*Saks & Co. v. The New York Edison Co.*, 4 P. S. C. R. [1st Dist. N. Y.], 138.) Upon rehearing the order was affirmed (5 P. S. C. R. [1st Dist. N. Y.], 119).

Corporate History.

The New York Edison Company was formed May 21, 1901, by consolidation of the Edison Electric Illuminating Company of New York and the New York Gas and Electric Light, Heat and Power Company. It is the successor, through purchase, merger and consolidation of about fifteen electrical companies the first of which was incorporated in 1880. In 1899 the control of the two predecessor companies had been acquired by the Consolidated Gas Company and that company too nearly all the shares of the New York Edison Company on its incorporation in 1901 and still holds them. The New York Edison Company is engaged in the manufacture and distribution of electricity for light, heat and power in the territory which was included in the City of New York prior to 1895, viz., the present Borough of Manhattan and that part of the Borough of the Bronx lying west of the Bronx River. The only other electrical supply company operating to any considerable extent in this territory is the United Electric Light & Power Company, the stock of which is also owned by the Consolidated Gas Company.

Franchises.

The Edison Company holds five franchises covering this territory, granted by the New York Board of Aldermen to five of the companies which this company succeeded. The first franchise was granted to the Edison Electric Illuminating Company of New York April 19, 1881. A franchise was granted to the East River Electric Light Company April 1, 1887 and the remaining three franchises were granted June 13, 1887, respectively to the Harlem Lighting Company, the North New York Lighting Company, and the Mt. Morris Electric Light Company. The franchise of 1881

was granted "for purposes of illumination," while the other four franchises were granted for "electrical purposes."

The only money compensation to the City provided for in these franchises was payment of one cent per lineal foot of streets that might be opened by the company. In the first franchise (1881) this payment was required to be made for all streets opened for underground work, but in other franchises payment was required only when streets were occupied for other than arc lights. But these provisions for a small compensation apparently, soon became obsolete for the reason that the electric companies no longer found it necessary to open any streets the underground conduits which contain their wires being laid by certain electrical subway companies specially authorized by law to do this work. However, by the terms of each of the five franchises, except the first, the grantee was required to furnish free to the city one street arc light for every fifty arc lights furnished to private consumers. It appears that the Edison Company is still furnishing a few free arc lights to the city although it claims that the obligation to do so has ceased; and it is said that the city has not, at least in recent years, demanded the much larger number of free lights which would be required if one arc light were to be furnished for every fifty arc lights in use by private consumers. The ground on which the company claims freedom from the original obligation to furnish free lights is a "change in the state of the art" of lighting by electricity, whereby the company is no longer to "furnish arc lights" to consumers but merely to furnish "current." It appears, therefore that the compensation actually given to the city by the Edison Company for the rights exercised under these five franchises, is negligible. The details of the corporate history and franchises of the Edison Company and the companies which it has superseded, may be found in a Report on the Franchises of the Electrical Corporations in Greater New York, submitted to the Commission by me under date of December 28, 1910, and published in Vol. 1, page 193 of the Annual Report for 1910.

Statutory Limitations.

For nearly a generation, or from the beginning of electric service in 1882 down to July 1, 1905, there was no statutory limita-

tion to the price which would be charged for electricity furnished to the City of New York or to private consumers within the territory in which the New York Edison Company operates. During that whole period, the company had complete control over the rates charged and in the early part of 1905, the maximum rate was 15 cents per kw. hr. for current for lighting and 10 cents per h. p. hr. for current for power, or about 13 1-3 cents per kw. hr. By chapter 732 of the Laws of 1905, the maximum price in the Edison Company's territory was fixed at 10 cents per kw. hr. for electric current furnished to private consumers and this limitation is still in force. By Chapter 733 of the Laws of 1905, the maximum price of electric current for city purposes other than street lighting was fixed at 10 cents per kw. hr. The maximum price for street lighting was fixed by the same act at \$100 per 450-watt lamp per year, \$90 per 325-watt lamp per year and lamps of other wattage in proportion. In 1906 (ch. 390), the charges for other lamps were made more definite through a provision that the rate should be \$2 per lamp over or under \$100 for each increase per decreases respectively of 25 watts of electric current above or below \$65 per lamp. In 1910 the act was further amended (ch. 749), to provide that the charge for flaming arc lamps consuming not less than 475 watts operated in pairs should be \$160 per lamp per year.

Schedule of Rates.

Changes have been made in the schedule of rates since the complaints in these proceedings were filed. In condensed forms the schedule is now as follows:

(1) General Rate — Available to all Consumers.

- 10c per kw. hr. for the 1st 250 kw. hrs. of monthly consumption.
- 9c per kw. hr. for the next 250 kw. hrs. of monthly consumption.
- 8c per kw. hr. for the next 250 kw. hrs. of monthly consumption.
- 7c per kw. hr. for the next 250 kw. hrs. of monthly consumption.
- 6c per kw. hr. for the next 250 kw. hrs. of monthly consumption.
- 5c per kw. hr. excess over 1,500 kw. hrs. of monthly consumption.

The general rate includes the supply and renewal of standard incandescent lamps, the supply of carbons for arc lamps and the trimming of arc lamps or equivalent allowances. Any consumer — agreeing for a year to use not less than 1,500 kw. hrs. per

month may obtain a reduction of one-half cent per kw. hr. if he furnished his own renewals, etc.

(2) Wholesale rate.

5c per kw. hr. for the first 100,000 kw. hrs. monthly consumption.

4c per kw. hr. for the next 100,000 kw. hrs. monthly consumption.

3c per kw. hr. for excess over 200,000 kw. hrs. monthly "

Not more than \$17,500 for 500,000 kw. hrs. monthly "

Not more than \$20,000 for 625,000 kw. hrs. monthly "

Not more than \$25,000 for 833,333 1-3 kw. hrs. monthly "

* (= 3.5c per kw. hr.) % (= 3.2c) () (= 3c per kw. hr.)

The yearly guarantee in the Borough of Manhattan is 100,000 kw. hrs.; in the Borough of the Bronx 60,000 kw. hrs.

(If the customer prefers to do so, he may use for power purposes electricity taken under the general or wholesale rate.)

(3) Power rate.

9.5c per kw. hr. for the first 200 kw. hrs. monthly consumption.

8 c per kw. hr. for the next 200 kw. hrs. monthly "

6 c per kw. hr. for the next 2,500 kw. hrs. monthly "

5 c per kw. hr. for the excess over 2,900 kw. hrs. monthly "

(4) Automobile, storage battery and refrigeration rate.

This rate was modified upon May 1st, 1914, and is now

5c for the first 2,500 kw. hrs. mo. or 82,191 kw. hrs. daily consumption.

4c for the next 2,500 kw. hrs. mo. or 82,191 kw. hrs. daily consumption.

2 $\frac{1}{4}$ c for the next 20,000 kw. hrs. mo. or 164,385 kw. hrs. daily consumption.

2c for excess over 50,000 kw. hrs. mo. or 657,534 kw. hrs. daily consumption.

3c for excess over 5,000 kw. hrs. mo. or 657,534 kw. hrs. daily consumption.

2 $\frac{1}{2}$ c for excess over 20,000 kw. hrs. mo. or 1,643,835 kw. hrs. daily consumption.

The minimum payment is \$10 per month.

(5) Acqueduct, Tunnel or Subway construction rate, \$20 per annum for each kilowatt of maximum demand. 1c per kw. hr. of low tension current consumed.

The maximum demand in each yearly period must be not less than 200 kilowatts.

(The rate for low tension current was made $21\frac{1}{2}$ per kw. hr. "without demand charge" on February 13, 1913.)

(6) Tunnel construction rate.)

4c per kw. hr. for electric current consumed.

$3\frac{1}{2}$ c per kw. hr. for any month in which consumption is not less than 25,000 kw. hrs.

3c per kw. hr. for any month in which consumption is not less than 50,000 kw. hrs.

(This rate is limited to tunnels and excavations in connection with rapid transit or transportation lines in the Borough of Manhattan or the Bronx or under the East, North or Harlem River.)

(7) High Tension Service rate.

\$30 per annum for each kilowatt of maximum demand.

$1\frac{1}{2}$ c per kw. hr. of high tension alternating current consumed.

The maximum demand in each yearly period must be not less than 200 kilowatts.

(This rate, in effect since March 1, 1909, is said to be applicable to "large structures, important power undertakings, elevated, surface, subway and tunnel railroads, or other large installations, permitting the use of 25 cycle alternating current at 6,600 volts.")

(8) High Tension High Load Factor Submarine Tunnel Construction rate.

\$60 per annum for each kilowatt or maximum demand to be paid at the rate of \$1.154 each week for each kilowatt of maximum demand during said week.

The minimum payment is \$30,000 per annum. The service is to be used exclusively by the customer and all subcontractors and is to terminate only at completion of work. Where high tension current can not be used low tension current may be used at $3\frac{1}{2}$ c per kw. hr. for current consumed.

The company also has rates, effective March 1, 1912, for "thawing frozen pipes." The charges for this service vary according to the size and length of the pipes thawed and are not measured directly by the quantity of electric current consumed in the process.

The company has filed with the Commission a number of "riders" designed for insertion in service contracts for the pur-

pose of modifying or making more definite the conditions under which electric current is supplied to various classes of customers. The riders which have an important bearing on rates are as follows:

“Conjunctional Service.”

“It is further understood and agreed that in view of the fact that the building enumerated herein are not more than 100 feet apart, are under a common (ownership, leasehold) and may be served from one service the current required for them may be taken collectively in determining the rate to which the undersigned is entitled under this contract.”

“Inter communicating Buildings or parts of buildings.

“It is further understood and agreed that when buildings or parts of buildings under a common ownership or leasehold are intercommunicating by means or door or passage ways permitting a person to pass from one to the other without going outside of either building, electric current consumed in each or in such intercommunicating parts as are under a common ownership or leasehold may be supplied jointly under a single contract.” (Effective April 23, 1913.)

“Owner’s or Lesses’s service.

“It is further understood and agreed, in view of the exclusion of all other electric service from the building and of a private plant for light or power during the term of the contract that the electric current consumed by the tenants shall be credited to the consumption of \$100,000 kilowatt hours annually guaranteed by the undersigned. The accounts of the tenants shall have no other relation with this contract.”

“Tenants ” Meters.

“It is understood and agreed that the New York Edison Company shall furnish and install separate meters for the tenants in this building and shall itemize bills rendered under this contract, giving the readings and the numbers of the individual meters.”

“Contract substitution.

“It is further understood and agreed that any other of the Company’s standard contracts, new existing or that may be adopted in the future, if of advantage to the undersigned may at any time be substituted for this contract.”

Several important facts should be noted regarding this schedule.

(1) The maximum fixed by the Legislature is 10 cents per kw. hr. but there are only two classes of customers who pay this maximum i. e. the general rate consumers who use not to exceed 250 kw. hrs. monthly, and power customers who pay 9½ cents per kw. hr. for the first 200 kw. hrs. of monthly consumption and use no more. The latter do not get free lamp renewals and hence are charged one-half cent less.

(2) All customers not in these two classes pay than the maximum rate, and the company should not increase their rates without violating the legislative limitation.

(3) Outside of the general and power rate classes, there is not rate above 5 cents per kw. hr. one-half the maximum allowed by law, and the minimum rate approaches 1 cent per kw. hr. for primary alternating high tension current and 2 cents for direct current. It is apparent that all of these rates could be greatly increased if the company desired; the legislative maximum does not stay in the way.

(4) If the Commission were to fix a maximum rate of 6 cents so urged by the counsel for complainants, the only persons directly affected would be certain general-rate, and power rate customers. All customers under the wholesale rate, the automobile, storage battery and refrigeration rate, the aqueduct tunnel or subway construction rate, the tunnel construction rate and the high tension rates would not be affected, as the highest rate under any one of these classes is considerable less than 6 cents per kw. hr. Certain customers under the general rate and power rate would also not be affected.

Unjust Discrimination.

Under the present schedule of rates, a customer must use 2,000 kw. hrs. a month to obtain a 7-cent rate and 4,000 kw. hrs. to obtain a 6-cent rate as appears from the following calculations.

First block	250 kw. hrs. at 10 cents.....	\$25.00
Second block	250 kw. hrs. at 9 cents.....	22.50
Third block	250 kw. hrs. at 8 cents.	20.00
Fourth block	250 kw. hrs. at 7 cents.....	17.00
	<hr/> 1000	<hr/> \$85.00

		8½ cents pr kw. hr.	
Fifth block	500 kw. hrs. at 6 cents.....		\$30.00
Next block	500 kw. hrs. at 5 cents.....		25.00
			<hr/>
Next block	2000 kw. hrs. at 7 cents per kw. hr.....		\$140.00
Next block	2000 kw. hrs. at 5 cents.....		100.00
			<hr/>
	4000		\$240.00

8 cents per kw. hr.

As all current consumed beyond 1500 kw. hrs. is charged at the rate of 5 cents per kw. hr. the actual price paid by customers using more than 4000 kw. hrs. a month will tend with increasing consumption toward the limit of 5 cents per kw. hr. and while it will never reach that limit under the "general rate" schedule, the consumer who reaches an average monthly consumption of 8,333 1-3 kw. hrs. is entitled to the wholesale rates which begin at 5 cents per kw. hr. (with a yearly guarantee of 100,000 kw. hrs.), and decrease to 4 cents and 3 cents. The actual prices at which bills are rendered under these block or step rates are graphically shown in the rate curves introduced by the company as Exhibit 56. The average price received by the for current under the general, power and wholesale rates was 6.88 in 1912 and 6.74 in 1913.

Under the general and wholesale rates, no classification of customers is made on any basis other than the total consumption of current. No account is taken of the size of the installation, the extent of its use, the time at which the current is taken, or the relation of the customers demand to the peak. The natural and inevitable result of such a schedule of rates based solely on discounts for quantity is to promote discriminations between consumers served under precisely similar conditions. These rates, it will be seen, favor the large consumer as compared with the small consumer and are discriminatory. The most pronounced cases of discrimination for substantially the same service under similar conditions appear under various riders attached to service contracts. Thus, if a landlord or lessee has buildings "not more than 100 feet apart" which "may be served from one service" this allowed to combine the current used therein in order to take advantage of a lower rate. A similar provision is made in the

case of intercommunicating buildings or parts of buildings. Again under the owner's or lessee's service a landlord may be credited with the current used in the building to make up the guarantee of 100,000 kw. hrs. required to entitle him to the wholesale rate. Under this arrangement it is agreed that "the accounts of the tenants shall have another relation to this contract. Under the rider providing for separate meters for tenants, the company agrees to "furnish and install separate meters for the tenants" and to "itemize bills rendered" under the contract "giving the readings and the number of the individual meters." Under this arrangement, the service to the landlord or lessee is identical with the service to the tenants, except that the landlord is responsible for collecting the bills. The difference in the rate is, however very great often 3, 4, or 5 cents per kw. hour.

The issues between the complainants and the Edison Company arising in this case under the riders just mentioned have already been considered in another proceeding. The United Electric Light and Power Company had established riders similar to those described above as part of its rate schedule under which it was possible for the landlord, lessee or agent acting for him to purchase current from the United Company at a low rate and to resell it to the tenants at a higher rate, or otherwise to take advantage of the consumption of the tenants so as to secure a much lower rate upon the current consumed by the landlord than any of the tenants could obtain and much lower than he could obtain if his consumption were considered separately. The landlord, lessee or agent could buy current at an average price varying from 9 to 5 cents per kw. hour or even lower, depending upon the total consumption of his tenants, and retain it to his tenants at a higher figure, usually 9 or 10 cents per kw. hour keeping for his own profit the difference between the low price at which he bought it and the higher price at which he sold it to the tenants — a profit obtained by interposing himself as a middleman between the company and its natural consumers. Yet none of the tenants, on the other hand could obtain current from the United Company at such low figures as could the landlord, because none of them could combine his consumption with that of the other tenants and meet the conditions imposed by the company in order to secure the

lowest rates. Yet, as the evidence in the cases affecting the United Company clearly showed the cost to the United Company of supplying current to the landlord as practically the same as the cost of supplying the tenants.

The various phases of this matter were first discussed in the opinion in Case No. 1638 (See *Knight vs. United Electric Light and Power Co.*, 4 P. S. G. R. [1st Dist. N. Y.], 373). The Commission ordered the United Company to discontinue these discriminatory practices. The company replied by reissuing the objectionable riders in a somewhat different form but without eliminating the objectionable features which the Commission had found to be illegal. In Cases Nos. 1798 and 1800 the whole matter has been reviewed and the various phases are fully discussed in the opinion filed. It is unnecessary to repeat the discussion here.

The practices which the complainants in this case urge as unfair and discriminatory are practically identical with others found to be illegal in the United cases (see riders given above under summary of rate schedule). The evidence as to these practices is not so comprehensive in this proceeding as in the United cases, and the figures showing their practical workings are not given in such detail, but it is certain that the amount of current sold under the "tenants inclusion" plan by the Edison Company is much larger and the contracts much more numerous than in the case of the United Company. There are instances where the landlord or his agent is purchasing current from the Edison Company under a wholesale contract where the rate is 5 and even 4 cents per kw. hour and selling it to the tenants at 9 or 10 cents per kw. hour the cost of service to the company being practically the same whether it supplies to the landlord at 5 cents or less or supplies direct to the tenants at 9 or 10 cents.

The schedule of rates which makes these practices possible has been voluntarily adopted by the company which has not contended that the special rates to landlords are unprofitable or do not yield a fair return. It has thus made public confession of its willingness to supply certain consumers at less than 6 or 7 cents per kw. hour the cost of service in such cases being not appreciably less than that in other cases where it charges 9 or 10 cents. Consumers paying 10 cents who has other supplied under similar conditions

for less than 6 or 7 cents have just ground for complaint against such unfair discrimination and naturally insist that a rate of 6 or 7 cents to all is fair and equitable.

This discrimination is due fundamentally to the existence of "step" rates where the rate decreases, as the consumption increases and for no other cause. Consequently, the landlord by purchasing or combining all of the current consumed in his building is able to get a much lower rate than any single tenant can obtain, because for the large amount of current the landlord pays a small rate per kw. hour, whereas each tenant consuming only a small amount must pay a large rate per kw. hour. The remedy found in the United cases is the elimination of differential rates where such differences are not based upon differences in cost of service. The present unfair and illegal discrimination must cease; and as there is no material difference between the cost of serving the landlord and the tenant and as the company is now voluntarily supplying many consumers at less than 6 or 7 cents per kw. hour these facts at least suggest that the rates to small consumers generally should be reduced to 6 or 7 cents to remove unjust discrimination. The two classes must be brought together and if less than 6 or 7 cents is a remunerative rate, and the company cannot logically claim it is not, having established it voluntarily, the inevitable conclusion is that the general rate should be lowered. It has been argued that this case may be decided upon this basis alone, and there are many precedents in the decisions of the Interstate Commerce Commission and those of the courts reviewing these decisions to support this contention.

Is an Appraisal Necessary?

Counsel for the company insists that none of the questions at issue in this proceeding may be decided by the Commission without an appraisal of all of the company's property. Counsel for complainants assert that the record contains abundant data upon which to base a decision that the cost of the property as shown by the record should be used to determine fair rates for electric service, that the company's demand at this late hour for an appraisal is merely for the purpose of delay and that the maximum rate for electric current should be made 6 cents per kw. hour.

Without deciding that the unjust discrimination above considered is not sufficient in itself to warrant a reduction in the

maximum rates, let us consider whether the company's contention is sound. As already stated, the complaint upon which this proceeding was originally based was filed over three years ago. The record is voluminous, and the investigation has covered a wide area. Upon last July 30th the hearing was closed, and at its urgent request the company was given until September 20th to file a brief. At that time, a month's extension was asked for and two weeks were given. At the end of two weeks the request was renewed and granted. Just before the expiration of this extension, the company filed a brief and asked that the case be reopened to take further testimony (1) upon the financial condition of the country and its effect on business and (2) upon the effect of certain recently introduced high efficiency lamps on the business and revenue of the company. Three years having already been spent in taking testimony, I recommended that the case should not be reopened. However, the Commission did reopen the case and considerably more testimony was taken, the cases being closed finally upon December 4th.

Although the case had been pending about three years and the company had been given abundant opportunity to present any evidence it wished to offer, it had neither asked that an appraisal be made nor offered to prepare one before the case was reopened last fall. It has repeatedly been stated that the company had no inventory or appraisal when the case was started and has prepared none since; but the company could easily have prepared an inventory and had every part valued within two or three years. Even in the application of October 19, 1914, for the reopening of the case for the submission of new evidence, the company made no reference to an appraisal and did not offer to present any evidence along this line. At one of the hearings in November, when asked how long it would take to make an appraisal, Mr. Edwards, the auditor of the company said two or three years. He estimated the cost at from \$200,000 to \$300,000. Mr. Hemmens, counsel for the company, said that the company would stipulate that it would prepare an appraisal of all of its property in less than nine months if the Commission would order it. Mr. Luria, counsel for the complainants, said they would not accept such an appraisal and of course the Commission would need to examine it closely.

Judging from the length of time required in other cases, an appraisal would not be completed in less than fifteen months and as the statistical data relating to receipts, expenses, etc., would need to be brought down to the date of the final appraisal it is certain that about two years would elapse before a decision would be rendered. In the meantime, the company would charge according to its present schedule of rates, for the rates fixed by the Commission take effect *thereafter*; they cannot be made retroactive under the Public Service Commissions Law.

But if an appraisal is so necessary, why did not the company prepare one, as other companies have done, and submit it when an opportunity was given the company to submit evidence? Why was the question not raised at the beginning or during the early stages of the case? Why did the company delay until the case had once been closed? When a company has had its day in court and has not submitted evidence it considers necessary, is it incumbent upon the Commission at the end of three years to go over the whole matter again and give the company another hearing? If an appraisal is absolutely necessary to fix fair rates, how can the company maintain that its rates are fair and reasonable to all consumers when it has had no appraisal and when its rates are fixed without one?

But however culpable the company may be and however unfair its action, a postponement of a decision for two years or until an appraisal is made, might be necessary if rate cases have not been and cannot be decided without appraisals. But as a matter of fact, hundreds of rate cases have been disposed of without appraisals. In some instances rates have been lowered and in others the companies have been allowed to raise rates. While an inventory and appraisal may be of assistance in determining with great precision the exact rate of each class of consumers, they are not absolutely necessary.

The practice of the Interstate Commerce Commission throughout its entire history has been to reduce rates, allow increases or dismiss complaints without resorting to appraisals. In the very important eastern and western rate advance cases, in the recent proceedings before the Commission, and in the application for advances now pending no appraisals have been made, and the rail-

roads have not contended that action should be deferred until the physical valuation of their properties has been completed. I have been unable to find any decision of the Commission because an appraisal was not made.

The question of valuation for rate-making purposes was recently before the Massachusetts Public Service Commission in the Middlesex and Boston rate case, a case described in the decision as "Manifestly one of great importance * * * because the principles which must control this decision may be of far-reaching importance in affecting the rates of other transportation companies under the jurisdiction of this Commission." The case was decided under the jurisdiction of the Commission." This case was decided October 28, 1914; and although the Massachusetts statute requires the Commission to give "due regard among other things to a reasonable regard upon the value of the carriers property" and although counsel for the corporation advocated the "reproduction cost of the property now being used, less depreciation by wear and tear and obsolescence" as the measure of value, the Commission did not base its decision on an appraisal. In the view of the Commission, "this theory is as inexpedient as it is unjust."

The decision contains the following expression:

"What the public interests of this Commonwealth obviously need is such regulation and such management of our public utilities that the rate-payers may always feel assured that their rates are based upon making only a fair and adequate return upon capital which has been invested for their convenience and benefit."

The New York Public Service Commissions Law (section 72) provides that, "In determining the price to be charged for gas or electricity, the Commission may well consider all facts which in its judgment may have any bearing upon a proper determination of the question * * * with due regard among other things to a reasonable average return upon capital actually expended * * *." Under this Act the Public Service Commission for the Second District in the most important cases before it, has rejected the theory that the cost of reproduction as determined by appraisal is a controlling factor in determining the valuation for purposes

of rate making and based its decisions on the cost of the property as shown by the books and records. In *Buffalo Gas Co. vs. Buffalo*, 3 P. S. C. R. (2d Dist. N. Y.) 553, the Commission said, Chairman Stevens writing the opinion:

"So far as we are aware, there has never been any decision of any court which is binding upon this Commission which holds that the cost of reproduction now, with or without depreciation, is a controlling factor in the fixing of value for rate making purposes."

The Buffalo electric cases, the Commission, having before it appraisals submitted by the company and the complainants, rejected both and adopted a valuation based on the records. In *Fuhrmann vs. Buffalo General Electric Co.*, 3 P. S. C. R. (2d Dist. N. Y.) 739, the Commission "Finding that the cost to the company could be ascertained with reasonable exactness by an examination of its books and records" expressed its belief that "the results shown by the report" on the examination of the books and records "should be accepted as the chief basis to work from in reaching a determination as to the fair value of the property in service."

In *Fuhrmann vs. Cataract Power and Conduit Co.*, 3 P. S. C. R. (2d Dist. N. Y.) 659, the Commission said:

"We therefore are confronted with the fundamental question whether in determining the amount of the fair investment upon which the return shall be made, in other words the value, we shall give chief weight and importance to the actual cost of the company within a recent period as disclosed by its own books, or allow that cost to be over-ridden by the conflicting proof which is submitted of what the witness think the property would now cost if reproduced."

In answer to this question the Commissioner said:

"The conclusion of the Commission is that in this case the fair value of the property used in the public service or what is equivalent thereto, the fair amount of the investment upon which the return should be computed, may be better ascer-

tained by giving the greater weight to the actual cost as the basis of the inquiry than in any other way."

Similar decisions might be cited from other states, and the Legislature of this State in 1905 when it reduced the maximum charge for electric current from 15 to 10 cents, had before it no appraisal of the property. Its action followed an examination of the records of the companies made by a committee of which Mr. Charles E. Hughes was counsel. The Edison Company did not attack the Act of the Legislature in the courts.

Whether the record in this case is sufficient to warrant a reduction in rates can only be determined by an examination of the evidence, but there is nothing in the law or in equity that would justify this Commission in taking the stand that it will not alter a single rate of the New York Edison Company until an appraisal has been made. It may not be possible to decide every point at issue or to fix all rates with such precision that in no case will the company be left with more than a fair return, but the evidence does indicate that certain reductions should be made. Perhaps a total revision and still further lowering of the rates should be left until experience has shown the results of these reductions. But it is certain that under the readjustment of rates herein proposed, the margin of profits will still remain so large in relation to investment or value that there is no danger of "confiscation." Whether an inventory of the property and a more minute inspection of the records showing actual cost would not require further reductions cannot now be determined; but the proposed readjustment will certainly yield at least, and possibly more than, a fair return.

Extent of Available Data.

The evidence as to the value and cost of the property, is derived from the books of the New York Edison Company and from data supplied from the books of the companies which have been absorbed in that corporation. To appreciate the value of such records, it should be noted at the outset that the electrical business is of very recent origin. The earliest franchise in the City of New York dates from 1881, and was granted to the Edison Electric Illuminating Company, the most important of the electrical corporations absorbed in the present system. The great growth

of the industry in the direction of large waterside generating stations with chains of sub-stations for distribution is a phase of the industry that falls almost wholly within the present control and within the life of the present corporation.

In 1898, the New York Gas & Electric Light, Heat & Power Co. was incorporated and aside from other property acquired control of seven electrical companies in Manhattan and The Bronx, thereby combining under one ownership all of the properties which passed to the present corporation. In February, 1900, the smaller companies were merged with the Power Company, and on May 1, 1901, the Edison Electric Illuminating Company of New York was consolidated with the Power Company under the name of the New York Edison Company.

The record establishes the following facts:

1. Of the property and business acquired on May 1, 1901, by far the greater amount came from the Edison Electric Illuminating Company. The books of this corporation are still in existence, and the cost of its property as of May 1, 1901, is part of the record in this case.

2. Of the entire property and business of the New York Edison Company, by far the greater part was built up within the life of that company, and is necessarily shown on its books.

3. The property acquired from the other five corporations engaged in the electrical business on May 1, 1901, was of minor importance. This is evidenced by the cost of their property and by their capitalization as reported to the State Board of Tax Commissioners.

An examination of certain details will show how complete is the record and the extent to which the property now used by the Edison Company has been built up since the present system was organized in 1898 and since the present corporation was formed in 1901. Thus, nearly all the effective generating plant used by the New York Edison Company at the close of 1913 has been installed during the life of the present company. The following table shows the generating stations operated by the New York Edison Company at the close of 1913, their capacity and their output for that year.

Generating Stations.

Station.	Capacity kw.	Output kw. hrs.
Waterside "A"	124,000	307,885,652
Waterside "B"	93,000	339,099,030
Kingsbridge	28,000	27,807,710
Duane Street	7,600	507,198
140th Street (Bronx)	2,500	342,120
Gold Street	900	None
<hr/>		
Total	256,000	675,541,710
(Total owned 228,000.)		

Of these stations, the Kingsbridge plant is owned by the Third Avenue Railway Company, and is therefore not to be considered, in connection with the Edison Company's investment. The Gold Street plant and the Bronx plant were taken over from the minor companies acquired in 1899. At present they are but little used for generating purposes; the Gold Street generating plant not being used in operation at all in 1913, and the output of the Bronx generating plant being insignificant—less than $\frac{3}{100}$ of 1 per cent. of the total output in 1913. The Duane Street plant belonged to the Edison Electric Illuminating Co. Waterside "A," according to the testimony of the auditor of the company was nearly all built and equipped subsequent to May 1, 1901, although the land had been purchased earlier. Waterside "B" was wholly constructed by the present company. These two Waterside stations as indicated in the preceding table are the only ones of real importance in the present inquiry. So far as the cost of the generating stations now in use is concerned the information is practically complete in the financial records of the two Edison Companies.

For the transformation of the current generated for distribution the Edison Company in 1913 used 30 sub-stations with a total capacity of 258,810 kilowatts. Of these stations, two or possibly three, with a present capacity of 20,400 kilowatts had originally been the property of the minor companies and a large part of the investment which these three stations now represent has been made

by the present company since 1901. The books of the two Edison Companies therefore contain the record of expenditures for much more than 90 per cent. of the total sub-station capacity.

The transmission and distribution system of the Edison Company is in the main an underground system. This is wholly so in the case of Manhattan and to a considerable extent in the Bronx. The figures show enormous growth within the present company.

Underground Transmission and Distribution System —

Date	High tension transmission feeders	Low tension feeders	Miles, low tension mains	Total length of feeders and mains
Jan. 1, 1901.....	49.92	98.90	255.64	374.46
Dec. 31, 1913.....	437.21	442.62	728.36	1,808.19
Increase	327.29	343.72	502.72	1,233.73

Nearly 90 per cent. of the high tension transmission feeders 70 per cent. of the low tension mains, and 80 per cent. of the low tension feeders have been installed since the present company was formed and their cost is naturally reflected in the records of the existing corporation. Practically the entire underground system taken over in 1901 came from the old Edison Company and is reflected in the books of that corporation.

The securities of the companies absorbed also afford some indication of the relative importance of the old Edison Company and of the other corporations absorbed. The capital stock and funded debt as reported shortly after their acquisition were as follows:

Mt. Mo.	Capital stock	Funded debt	Total.
Mt. Morris Elec. Lgt. Co...	\$1,500,000	\$988,000	\$2,482,000
North River Elec. Lt. & Pr. Co.	400,000	104,000	504,000
N. Y. Ht. Lt. & Pr. Co.....	375,000	320,000	695,000
Manhattan Ltg. Co.....	250,000	250,000	590,000
Edison Elec. Ill. Co.....	\$2,525,000	\$1,682,000	\$4,187,000
	9,200,000	6,500,000	15,700,000

Including the \$98,000 of stock of the Block Lighting Company whose property and franchises were owned by the Manhattan Lighting Company, and the \$100,000 of stock of the Borough of

Manhattan Electric Company which merely leased and operated the New York Heat, Light and Power Company, the securities of the smaller corporations were less than one-third of the capitalization of the Edison Electric Illuminating Company. It is clear that the property and business of the present Edison Company were chiefly acquired from the old Edison Company and that the property derived from the other corporations of limited value.

How large is the proportion of the total property and business of the Edison Company which has developed during the corporate life of the present company, is evidenced by the following comparative data for 1913 and 1902, the first complete year of the present company's operations:

Item	1902	1913
Current sold	75,199,176	540,028,777
Customers	26,211	136,180
Meters set	33,691	193,656
No. of incandescent lamps	1,234,043	5,718,481
No. of arc lamps	16,481	30,520
Heating appliances (kw.)	251	3,556
Storage battery, etc. (kw.)	1,386	13,288
Motors (H. P.)	62,377	361,170
Connected installation (50 watt equivalents)	2,343,721	11,623,240

From those figures it appears that four-fifths of the entire business has been developed during the corporate life of the present company and is reflected in the present Edison Company. Of the remainder, by far the greater part came from the old Edison Company.

Even in the absence of data for the minor companies, the records of the present Edison Company and of the old Edison Company would afford practically complete information on the growth of the property and business of the existing corporation.

Formation of the New York Edison Company.

As noted before, the New York Edison Company is the outcome of the combination of a number of electrical corporations in Manhattan and the Bronx, which had been brought together by its predecessor the New York Gas & Electric Light, Heat and Power

Company. The transformation of these companies into the present system was accompanied by an inflation in capitalization. The financial changes may be briefly noted. The New York Gas & Electric Light, Heat & Power Company in 1899 acquired the capital stock of the Edison Electric Illuminating Company, the capital stock of seven other corporations and certain bonds, as follows:

	Capital Stock	Bonds
Mt. Morris Elec. Lt. Co.....	\$1,500,000	
North River Elec. Lt. & Power Co.	300,000	\$100,000
N. Y. Ht. Lt. & Pr. Co.....	375,000	155,000
Borough of Manhattan Elec. Co...	100,000	
Cons. Tel & Elec. Subway Co.....	1,500,000	4,225,000
Block Lighting & Power Co. No. 1	98,000	
Manhattan Lighting Co.	250,000	250,000
	<hr/>	<hr/>
Total	\$4,123,000	\$4,730,000
Edison Elec. Ill. Co.....	9,200,000	
	<hr/>	<hr/>
	\$13,123,000	\$4,730,000
For these securities the N. Y. G. & E. L. H. & P. Co. issued:		
Capital Stock		\$36,000,000
Purchase Money Mtge. Bonds.....		21,000,000
First mortgage bonds		7,500,000
		<hr/>
		\$64,500,000

The purchase money bonds were issued for the acquisition of the \$9,200,000 stock of the Edison Electric Illuminating Company. The Edison Stock was further pledged with the stock and bonds of the other companies as security for the \$7,500,000 of bonds issued under the first mortgage of the Power Company. It should be noted that \$6,500,000 bonds of the \$988,000 bonds of the Mt. Morris Company were left undisturbed. The total increase in securities, resulting from the combination of these companies in the Power Company, was approximately \$46,500,000.

Provision was also made for the issue of \$4,000,000 of first mortgage bonds to provide a construction fund for the Edison Company. The total capitalization of the system, including un-

derlying bonds left undisturbed, was thus brought up to \$75,988,000.

In February, 1900, all the companies acquired, except the Consolidated Subway Company and the Edison Electric Illuminating Company, were merged with the Power Company. On May 1, 1901, the Edison Electric Illuminating Company, and the Power Company were consolidated under the name of the New York Edison Company. The capital stock of this new corporation was \$45,200,000 equal to the capital stock of the Power Company (\$36,000,000) and of the old Edison Company (\$9,200,000). The net result of these combinations was that aside from the bonds issued to secure additional funds, the capitalization of the new company was made \$55,650,000 more than the capitalization of the original companies. The total amount of stocks and bonds outstanding became \$85,000,000.

This may be shown more clearly in the following table.

Formation of New York Edison System and Increase in Capitalization.

I.

N. Y. Gas & Electric Light, Heat & Power Co., 1899.

	Capitalization of constituent companies	Capitalization N. Y. G. & E. L. H. & P. Co.	Increase in Capitalization
Capital stock . . .	\$13,323,000	\$36,000,000	\$28,677,000
Bonds	12,218,000	35,988,000	23,770,000
	<hr/> \$25,541,000	<hr/> \$71,988,000	<hr/> \$46,447,000

II.

New York Edison Company, 1901.

	Capitalization of N. Y. G. & E. L. H. & P. Co.	Capitalization of N. Y. E. Co.	Increase in Capitalization
Capital stock . . .	\$36,000,000	\$45,200,000	\$9,200,000
Bonds	39,988,000	39,988,000	
	<hr/> \$75,988,000	<hr/> \$85,188,000	<hr/> \$9,200,000

III.

Total increase in capitalization:

N. Y. Gas & Electric L. H. & P. Co.....	\$46,447,000
N. Y. Edison Co.	9,200,000
	<hr/>
	\$55,647,000

This inflation was reduced by May 1, 1901, to the extent of about \$500,000 through the acquisition of the securities of the Yonkers Electric Light & Power Company and other outstanding stock and bonds of the original companies for which no additional securities were issued. The net inflation was thus \$55,000,000.

The figures for capitalization indicate a maximum investment in all property of about \$30,000,000 at the time the present corporation was formed in 1901, if the stock and bonds of these companies had initially been issued at par for cash or for property at cash value in connection with the refunding of \$988,000 of bonds of the Mt. Morris Electric Light Company, it appeared that those securities had been sold at 80, involving a discount of \$196,600. The Commission accordingly authorized the issue of new securities only to the amount of the cash realized, \$790,400. The report of the Consolidated Telegraph and Electrical Subway Company, in evidence in this case shows that \$2,935,000 of the bonds required by the Power Company had been issued at a discount of \$709,300. On those two bond issues alone, the discount was in excess of \$900,000. Where bonds were issued at such liberal discounts, it is not unlikely that the stock stood for cash investment at less than par.

Further, of the \$29,000,000 in securities remaining a large part represented \$4,259,000 in patent rights and \$5,725,000 of securities of the Consolidated Telegraph and Electrical Subway Company. Taking into account the discount at which the latter were issued there remains the amount of \$20,000,000 which covers the actual investment in the plants of the electrical companies in Manhattan and the Bronx, their current assets including over \$500,000 of unexpended bond proceeds and nearly \$2,000,000 of investments in securities of other companies not here involved.

The capitalization with which the Edison Company opened its books on May 1, 1901, and which corresponded to the original

capitalization of \$30,000,000 covering both the electrical companies and the Consolidated Duct Company, was \$85,000,000.

Property in 1901.

The record contains abundant data on the cost of the property of the corporations absorbed in the Edison system, as evidenced by their books. The largest company absorbed was the old Edison Company. Its books are still in existence and the auditor of the present company, who was also the auditor of that company, testified that the book figures were as follows:

Plant and property.....	\$16,533,912.92
License under Edison patents.....	3,159,000.00
	<hr/>
	\$19,692,912.92

These items were offset by reserves as follows:

General depreciation	\$253,013.91
Improvements, betterments, etc.	715,235.37
	<hr/>
	\$969,232.28

These reserves were carried over to the New York Edison books and subsequently deducted from the plant and property account. The net figure for physical property, after deducting reserves set aside from earnings to take care of depreciation, etc., was accordingly \$15,565,660.64.

The other companies absorbed by the Edison Company were:

Mt. Morris Electric Light Company.

North River Electric Light & Power Co.

New York Heat Light and Power Co.

Borough of Manhattan Electric Co.

Consolidated Telegraph & Electrical Subway Co.

Block Lighting & Power Co., Number 1.

Manhattan Lighting Co.

Yonkers Electric Light & Power Co.

Of these companies, the Yonkers Company did not operate in Manhattan or the Bronx, and the Consolidated Telegraph & Electrical Subway Co. was not engaged directly in the electrical business; it was and is still the owner of the underground ducts used by the New York Edison and other companies. The Borough of

Manhattan Company owned no plant, but was the lessee of the New York Heat, Light & Power Company. The Block Lighting and Power Company, No. 1, had no separate existence, its property and franchises having been acquired by the Manhattan Lighting Company. Our first concern is accordingly with the property of only four of these corporations. We have, however, their balance sheets submitted as of June 30, 1899, soon after they had been acquired by the New York Gas & Electric Heat, Light & Power Company. There is shown below the cost of real estate, improvements and equipment, and patents as of June 30, 1899:

Property of Companies Merged With the New York Gas & Electric Light, Heat and Power Co.

Company.	“ Cost of Real Estate Improve- ments ” and “ Cost of Equip- ment.”	Patents.	Total.
Mt. Morris Elec. Lt. Co.	\$1,636,754.56	\$1,100,000	\$2,738,754.56
Manhattan Ltg. Co..	500,000.00		500,000.00
N. Y. Ht., Lt. & Pr. Co.	688,187.19		688,187.19
No. Riv. Elec. Lt. & Pr. Co.	410,000.00		410,000.00
	<hr/>		
	\$3,236,941.75	\$1,100,000	\$4,336,941.75

The New York Gas & Electric Light, Heat & Power Company acquired real estate for \$100,000 not included above.

These companies and the Edison Electric Illuminating Company possessed all of the property that passed to the present Edison Company. These figures, therefore, afford a close approximation to the cost of total property acquired by the New York Edison Company at organization on May 1, 1901. It is summarized below:

Property other than Patents:

Edison Electric Illuminating Co. as per books,

April 30, 1891.....\$16,533,912.92

Other companies as per bal. sheets, June 30, 1889.	3,236,941.75
Real estate—N. Y. G. & E. L. H. & P. Co.,	100,000.00

Total	\$19,870,854.67
Less reserves	968,252.38

\$18,902,602.39

Patents.

Edison Electric Illuminating Co., . . . \$3,159,000	
Mt. Morris Elec. Lt. Co., 1,100,000	\$4,259,000.00

\$33,161,602.39

Thus, the total cost of the physical property to May 1, 1901, is reported as less than \$20,000,000 and after deduction of reserves, as less than \$19,000,000. Some additions may have been made to the property of the smaller companies between June 30, 1899, and May 1, 1901, but in view of the small amount of property these companies possessed, it is not probable that the additions were large. If depreciation for this period were deducted it is reasonably certain that \$19,000,000 would cover or exceed the proper amount of real estate, improvements and equipment on May 1, 1901.

This amount is probably very much in excess of the value of the property at that date. In 1905, the Legislative Committee under the guidance of Mr. Charles E. Hughes, made an investigation of the Edison Company and reported to the Legislature. The findings of this committee formed the basis for the action of the Legislature in reducing the maximum charge for the electricity from 15 cents in 10 cents, the present legal rate, and the Edison Company never contested this act in the courts. The Committee reported that the maximum amount for all the property of the company, without any deduction for depreciation, used in the electrical business in Manhattan and the Bronx, but also the property of the Yonkers Company and the investment in duct companies and in the securities of other corporations. According to the data reported by the Committee, the plant and distribution system should have stood at \$16,560,573.70. The Committee arrived at this figure by making deductions for expired patents and property

abandoned or destroyed. The report of the Legislative Committee has been ruled out from the record and cannot therefore be used in this case as evidence of the value of the property. It is merely referred to here to indicate that in adopting the amount of \$19,000,000 for property on May 1, 1901, great liberality is shown towards the company.

The amount of \$19,000,000 covers the book cost of electric property belonging to all the companies in Manhattan and the Bronx. These companies were originally competitors and their franchises and operating territories overlapped. There was doubtless much duplication of property, and the total cost was probably much in excess of the cost of a single system adequate to supply the entire territory. Corporate consolidation and the establishment of a unified system whether immediately or ultimately rendered considerable property useless this being the usual result of such consolidations. It may fairly be argued that the inclusion of all property and the use of its cost as a factor in determining the amount upon which the company is entitled to a fair return, is fair to the consumer, as it practically capitalizes against him the cost of establishing a monopoly. Undoubtedly the present consumer should not be called upon to pay a return upon property which has ceased to be used or which has been eliminated because of duplication in case of consolidation. But the evidence does not indicate fully to what extent property was eliminated as the result of combination, and no reduction is made, therefore, from the amount of \$19,000,000 for such items. This is another instance where questions have been removed in favor of the company.

Patents.

Patents or licenses under patent rights appear on the balance sheets of the absorbed companies at \$4,259,000. One witness testified that the original patents have expired. Obviously, if they have ceased to exist, they should not be values as property used in supplying current. These very patents were dealt with by the Legislative Committee of 1905, which refused to include them in the property valued. Similar action was taken by the Public Service Commission for the Second District in *Fuhrmann vs. Buffalo General Electric Co.* (3 P. S. C. R. [2d Dist. N. Y.], 739). The

Wisconsin Railroad Commission in a recent decision (*City of Milwaukee vs. Milwaukee Electric Railway & Light Co.*, 10 W. R. C. R. 1, 92), refused to include patent rights in its valuation of property, taking the position that "the price paid for such rights would seem to be operating expenses rather than capital charges" and that "if regarded as capital charges at all, they should be written off during the life of these rights from the profits for which they are responsible."

It is necessary to discuss the questions which arise in this connection, for the profits have been ample to pay a fair rate of return and still permit the company to write off the entire book cost of all patents. The subject will be more fully treated in connection with "going value."

Additions Since 1901.

The books of the New York Edison Company were opened as of May 1, 1901, by placing thereon figures for "plant and property" which in a large measure were merely entries to balance the securities issued to effect the combination. The entries for "plant and property" were approximately \$85,000,000 but these were later reduced by credits, and the net amount given by the witnesses for the company as the book figure for May 1, 1901, is \$79,891,832.25. This figure covered not only the plant and operative property used in supplying current to consumers, but also patent rights and \$5,745,500 of stocks and bonds of the Consolidated Telegraph & Electrical Subway Company and \$390,100 of the securities of the Yonkers Electric Light and Power Company. It covered also the inflation in securities brought about by the consolidation. The operative plant and property which it represented was, as shown before, about \$19,000,000. In the thirteen years that elapsed between the formation of the present Edison Company and December 31, 1913, additions to its property have amounted to over \$50,350,000, and the increase in the investments in securities of other corporations has been more than \$14,000,000. In all, the increase in fixed property, in miscellaneous investments, and current assets has amounted to more than \$65,000,000. It has been accomplished without any proportionate increase in capital obligations. Between May 1, 1901, and December 31,

1913, outstanding securities were increased by about \$3,050,000 and \$17,300,000 were borrowed from the Consolidated Gas Company. The additional capital obligations incurred were thus \$20,350,000. To the extent of \$45,000,000 the property has been built up out of earnings. The details appear on the accompanying statement, showing in condensed form the situation on May 1, 1901, and at the close of the year 1913.

:

New York Edison Company's Comparative Balance Sheet (Condensed.)

Asset Side	May 1, 1901	Dec. 31, 1913	Increase or decrease (D)
Pro. at May 1, 1901 (a).....	\$79,891,832.25	\$77,893,823.69	\$1,999,008.56
Pro. acquired since May 1, 1901 (b)		50,352,624.54	50,352,624.54
Total	\$79,891,832.25	\$128,245,448.23	\$49,353,615.98
Mis. Investments (d).....	\$2,191,017.61	\$16,296,969.26	\$14,105,951.65
Ins. Fund investments.....	72,824.09	710,225.43	637,401.34
Current assets, etc.	4,059,823.50	11,019,013.24	6,959,189.74
Total	86,215,497.45	\$156,271,656.16	\$70,056,158.71
Liabilities Side:			
Capital stock (c)	\$45,072,000.00	\$50,153,717.00	\$5,081,717.00
Funded debt (c)	40,156,183.00	38,128,000.00	(D) 2,028,183.00
Due Cons. Gas Co. for loans.		17,300,000.00	17,300,000.00
Total	\$85,228,183.00	\$105,581,717.00	\$20,353,534.00
Contingency and renewal reserve...		\$15,820,315.74	\$15,820,315.74
Ins. and other reserves.....	76,896.05	1,553,622.00	1,473,725.95
Current Liabilities	1,321,434.29	3,702,297.77	2,380,873.48
Surplus or deficit (d...).....	613,005.89	29,614,703.65	30,027,709.54
Total	\$86,215,497.45	\$156,271,656.16	\$70,056,158.71

(a) The "plant and property" accounts entered on the books May 1, 1901, were as follows:

License under Edison patents	\$3,159,000.00
Plant and property	81,688,645.60
Construction "Bronx"	95,186.42
General Fixture Account	1,007.50

Total	\$84,943,639.52
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This amount was subsequently reduced to \$79,891,832.26 by crediting to the property account items appearing on the books on May 1, 1901, amounting to \$4,805,224.28, and a number of transactions occurring after May 1, 1901, but related to the period prior to that date, aggregating \$246,782.99. The items on the trial balance of May 1 are as follows:

Anthony N. Brady	\$28,700.00
General depreciation	253,016.91
Improvements, betterments, etc.	715,235.37
Bond interest accrued	942,180.00
Stockholders Edison Elec. Ill'g Co.	2,866,092.00

	\$4,805,224.28
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To quote from the letter of the company in explanation, "This amount was credited to property account and the corresponding entries on the liability side of the balance sheet thereby extinguished. The accounts, 'general depreciation,' 'improvements, betterments, etc.,' and 'stockholders Edison Electric Illuminating Company,' simply represented reserves and surplus. * * * The item, 'bond interest accrued,' represented the amount of interest on the indebtedness of the Consolidated Telegraph and Electrical Subway Company, and the Yonkers Electric Light and Power Company which had accrued to that date but had not been paid. * * *"

(b) Includes construction work in progress.

(c) Excluding portion held by the company.

(d) Excluding stock of Edison Electric Illuminating Company.

(e) Adding to the deficit on the trial balance of May 1, 1901, the amount of \$246,782.99, for subsequent credits to capital for transactions referring to the period prior to May 1, 1901.

The company expended on additions during the period of May 1, 1901 to 1913, over \$56,000,000. After deducting the property retired (i. e., property worn out, lost, destroyed, abandoned, sold or withdrawn from use), amounting to more than \$8,000,000, the net additions for the period stand on the books at \$48,353,615.98.

During the period 1901-1908, there was charged off for depreciation \$2,039,584.34. Apparently this entire sum applied to property added during the same period, for no change was made in the figures for property acquired May 1, 1901, on account of retirements. During the next five years, 1909-13, the amount written off for depreciation on property retired was \$5,468,145.17. This amount represents the net loss, after deducting from the cost of the property retired approximately \$800,000 as the amount received from sales and the value of materials recovered and put into stock. The total amount of property retired during these five years was \$6,267,813.85, distributed as follows:

Of property acquired at organization.....	\$1,999,008.56
Of property installed between 5-1-'01 and 12-31-	
'06	4,161,438.97
Of property installed between 1-1-'09 and 12-31-	
'13	107,366.32
<hr/>	
Total	\$6,267,813.85

The total amount written off for depreciation from the beginning of the company is \$7,507,729.51.

It will be noted that only \$2,000,000 has been written off for retirements of property acquired May 1, 1901, and this only in the last five years (1909-13). It will doubtless seem strange that the retirements of the newer property, i. e., the property installed between 1901 and 1908, should be more than three times as great as the retirements of the older property taken over from companies some of which dated back to the eighties. The additions made between 1901 and 1908 amounted to about \$32,000,000, of which over \$6,000,000, or nearly one-fifth, has been retired. Of property acquired on May 1, 1901, standing on the books of the original companies at about \$19,000,000, only \$2,000,000 have been charged off, all of it within the last five years. With the rapid

progress in electrical apparatus, one would expect that a much greater amount of the old property would have been scrapped and written off the books. This point need not, however, be stressed here, but it should be noted that if the Commission bases a decision in part on the figures as shown by the books, the company is certainly given the advantage, and if the Commission errs, the error is in favor of the company.

In the table below, the yearly additions to plant and distribution system are shown, and also the work in progress at the close of the year. The table is based on the testimony of the auditor of the New York Edison Company and the reports rendered to the Commission. It shows additions in excess of retirements amounting, at the close of 1913, to \$48,353,615.98. No deductions have been made for accrued depreciation on existing property.

In the last column of the table, the total cost of the property is shown, starting with the figure of \$19,000,000 for property May 1, 1901.

Investment in Plant and Distribution System (Fixed Electrical Capital) New York Edison Co., 1901-13.

Year.	Additions.	Work in Progress at close of year.	Amount at close of year.
May 1, 1901...	.....	.....	\$19,000,000.00
1901...	\$1,335,441.49	.....	20,335,441.49
1902...	2,473,812.89	.....	22,809,254.38
1903...	3,593,338.04	.....	26,402,592.42
1904...	2,314,691.37	.....	28,717,283.79
1905...	2,557,122.59	.....	31,274,406.38
1906...	3,644,356.81	.....	34,918,763.19
1907...	5,306,437.55	.....	40,225,200.74
1908...	9,154,456.77	14,228.68	49,393,886.19
1909...	1,479,066.06	1,408,084.13	52,266,807.70
1910...	3,591,245.01	1,469,120.96	55,919,089.54
1911...	2,501,565.10	2,236,744.54	59,188,278.22
1912...	5,168,857.77	1,326,790.69	63,447,182.14
1913...	3,858,042.04	1,375,182.49	67,353,615.98

\$46,978,433.49

The book figures for the property of the New York Edison Company devoted to its electrical operations are thus, in round numbers, \$67,350,000, made up as follows:

Property of electrical companies in Manhattan and the Bronx acquired 5-1-'01.....	\$19,000,000.00
Less retirements to Dec. 31, 1913.....	2,000,000.00
<hr/>	
Net amount of original property.....	17,000,000.00
Net additions since the formation of the New York Edison Company	50,350,000.00
<hr/>	
Total	\$67,350,000.00

Depreciation and Net Investment.

It is well settled that depreciation must be deducted in arriving at the amount upon which a company is entitled to a fair return. (See, for example, *City of Knoxville v. Knoxville Water Co.*, 212 U. S. 1; *People ex rel. Kings County Lighting Co. v. Willcox et al.*, 210 N. Y. 479, 156 App. Div. 603.) For the period 1901-13, the company collected from consumers and put aside for depreciation and contingencies \$23,328,045.25. The charges against this reserve during the same period for property worn out, lost, destroyed or withdrawn from use were \$7,507,-729.51, leaving a balance at the end of 1913 of \$15,820,315.74. This represents funds taken from consumers and leaves the net investment of the company in plant and distribution system at an amount of the company in plant and distribution system at an amount not in excess of \$51,533,300.

The growth of the reserve in relation to property may be seen from the accompanying table:

Property and Reserve for Renewals and Contingencies.

Year ended.	Plant and distribution system.	Net investment	
		Renewal and contingency reserve.	in plant and distribution system.
June 30, 1905..	\$29,995,845	\$3,408,448	\$26,587,397
June 30, 1906..	33,096,585	4,397,730	28,698,855

June 30, 1907..	37,571,982	6,103,273	31,468,709
Dec. 31, 1907..	40,225,201	6,510,984	33,714,217
Dec. 31, 1908..	49,393,886	7,866,084	41,527,802
Dec. 31, 1909..	52,266,808	9,143,500	44,738,714
Dec. 31, 1910..	55,919,090	11,180,376	43,123,308
Dec. 31, 1911..	59,188,278	11,917,778	47,270,500
Dec. 31, 1912..	63,447,182	13,602,130	49,854,052
Dec. 31, 1913..	67,353,616	15,820,316	51,533,300

It should be noted that this reserve does not represent a distinct fund, invested in specific property. The money has been used by the company to extend its general property; that is, to the extent of \$15,820,316, the property of the Edison Company has been paid for with funds contributed by the consumers through the rates for current.

Counsel for complainants in this case contends that "as the company has collected this sum from consumers on account of depreciation over the amounts it has charged for realized depreciation, it certainly should not be permitted to claim a right to earn a return on a greater amount than the book value of its assets, less this reserve fund." It is not necessary at this point to decide the question raised by complainants' counsel. This fund has been accumulated through charges to operating expenses, and the adequacy or excessiveness of these charges can best be considered in connection with the earnings and expenses of the company. But it may be observed that if the actual depreciation is less than the amount set aside by the company, then the charges to operating expenses have been excessive.

For illustration, let us assume that the actual depreciation is only one-third of the amount indicated by the reserve, or \$5,300,000, in round numbers. This means that throughout the period the company has been making excessive charges to operating expenses, and that 55 per cent. of the amount set aside yearly would have sufficed to provide the necessary depreciation fund. Applied to 1913, it means that operating expenses should have been charged not with \$3,197,666 but with \$1,760,000. The amount that would be added to property investment would be \$10,500,000 and the amount added to profits in 1913 would be \$1,440,000 — a sum sufficient to yield a return of more than 14

per cent. on the former amount. If we assume that the actual depreciation be one-half of the amount of the reserve, or \$7,900,000, it means that 65 per cent. of the amount charged to operating expenses would have provided an adequate depreciation fund. Applied to 1913, it means that \$2,080,000 would have been an ample depreciation charge, and that profits were understated to the extent of \$1,120,000. The amount added to the valuation of property is less than \$8,000,000, and the amount restored to profits yields a return of more than 14 per cent. on such additional valuation. It is clear that any increase made in property by the adoption of a lower figure for depreciation would be offset by the increase in profits, which would be necessarily the result from a lower operating charge to provide for depreciation.

Allowance must yet be made for working capital. Analysis of the balance sheet and the operating expenses of the company for 1913 indicates that \$3,500,000 would cover both operating expenses and operating and construction supplies. The net operative plant, working capital, etc., at the close of 1913 thus total \$55,033,300, or, in round figures, \$55,000,000.

In arriving at a valuation of the property used by the New York Edison Company, two other points should be noted — the large extent to which the property has been constructed within very recent years and the importance of land in the investment of the corporation.

It has been pointed out that since 1901 over \$56,000,000 has been expended on additions, and that at the close of 1913 the book cost of the original property acquired in 1901 was about \$17,000,000. More than two-thirds of the total property of the Edison Company was built during the past decade and over one-third during the past five years. In view of the fact that the property has been acquired so recently, the book figures closely approximate present cost, and probably exceed it, except in the case of land.

Appreciation of Land.

If the company is entitled to have the appreciation in the value of its lands added to the property on which it is entitled to a return, the cost is not an index of its present value. The tax assessors are required to assess separately land and the improve-

ments on land. The Commission requires that there be reported to it yearly the taxes on lands as distinguished from the taxes on improvements. For 1913 the figures were as follows:

Taxes on lands	\$59,407.82
Taxes on improvements on lands.....	303,363.24

Total \$362,771.06

The tax rate in 1913 was a little below 2 per cent., and the valuation set by the city on the land by the company is consequently less than \$3,500,000. It should be noted that in connection with certain valuable pieces of land held by the company on Duane Street and Gold Street, originally the most important generating stations, there may be some question of the propriety of including them in the operative property of the company. Another item of real estate, land and building, assessed at about \$200,000, is not used for operating purposes at all. These points need not, however, be emphasized. It is generally believed that assessments in New York City are quite close to market values. In any event, these figures indicate that the land holdings of the New York Edison Company as a small fraction of its total property, and that even if so extreme an assumption be made as that the assessment figures are only one-half of the market value of the land, the resulting figure for the appreciation of real estate would not reach \$5,000,000. If the figure of \$60,000,000 be taken for the valuation of the Edison property devoted to electrical operations, ample allowance is made not only for the appreciation of land values, but also for other factors that may have enhanced the value of the company's property.

Capital From Surplus Earnings.

The property of the New York Edison Company has in very large part been built up, not from capital furnished by investors, but from surplus earnings. It has been shown that the original capitalization of the electrical companies in Manhattan and the Bronx gathered together in 1898-99 was approximately \$20,000,000, and that \$4,000,000 of additional capital had been brought in before the present company was formed by the combination of

the earlier corporations. Part of the original securities stood for licenses under patent rights, and part for discounts. Assuming, nevertheless, that the entire original capitalization stood for actual cash, the Edison Company at organization represented an investment in its operative property of not to exceed \$23,000,000 or \$24,000,000.

Subsequent to May 1, 1901, the company issued \$3,500,000 in bonds, realizing therefrom \$3,746,250 in cash. Up to the close of 1913, it had borrowed from the Consolidated Gas Company \$17,300,000. The new capital contributed by investors is accordingly in round numbers \$21,050,000. The maximum amount of cash put into the Edison Company's property by investors is thus less than \$45,000,000. How much less, depends on the source of the \$14,000,000 expending in financing duct companies. If surplus earnings were used for the latter purpose than the capital invested in operative property would be under \$31,000,000.

Since May 1, 1901, the total increase in the net assets of the Edison Company has been \$66,201,559. The additional capital secured from investors is \$21,000,000. After deducting real estate mortgages paid off and discounts on securities refunded, etc., the amount available was less than \$21,000,000. It is apparent, therefore, that nearly \$46,000,000 of the property of the Edison Company has been financed from earnings. Nearly \$16,000,000 of this sum represents the amount collected from consumers and held in reserve to safeguard the property of the Edison Company against depreciation, etc. Approximately \$30,000,000 represents the surplus earnings of the company after paying interest and dividends. The surplus and depreciation reserve, in excess of the amount needed to make good property discarded on account of depreciation, have been sufficient to finance more than nine-tenths of the additions to plant and distribution system of the company.

Resume.

The discussion to this point may be briefly summarized as follows:

1. The record before the Commission gives practically a complete financial account of the properties acquired and now held by the New York Edison Company.

2. The cost of the plant and distribution system of the New York Edison Company, without any deduction for depreciation, is, at the maximum, \$67,350,000.

3. Two-thirds of this property has come into existence within the past ten years, and over one-third during the past five years. The book costs may properly be taken as evidence of the " capital actually expended " and approximate present cost.

4. The company's reserve for depreciation which has been collected from the consumer, is \$15,820,000.

5. The cost of the property, deducting this amount, is \$51,530,000.

6. The cost of the property, deducting the reserve for depreciation and making allowance for working capital, is about \$55,000,000.

7. The appreciation on real estate, taken at an extreme and improbable figure, would not exceed \$5,000,000, as such a figure would be one and a half times the entire assessed value of all the land held by the Edison Company.

8. The amount upon which the company is entitled to a fair return, i. e., the fair value of the property used by the Edison Company in its electrical operations, after making liberal allowance for necessary working capital, for appreciation on real estate and for other factors, would not exceed \$60,000,000, and would probably fall considerably below this figure. Even if patent rights were to be included at the book figure, the total would be less than \$65,000,000.

9. Of this amount, the maximum contributed by the security holders could not have been more than \$45,000,000. The capital actually supplied by investors for the upbuilding of the operative property of the Edison Company is probably nearer to \$30,000,000.

Investments in Other Corporations.

The discussion to this point has concerned itself with the property of the Edison Company devoted to electrical operations. Besides its plant and distribution system, and current assets, the company has large investments in the securities of other corporations. These with insurance participation certificates and some shares of the old Edison Company, appear on the balance sheet for the

amount of \$17,153,687.19. This figure does not show the cost of all non-operative property, for in addition the general property account includes without separate valuation securities having a par value of \$6,135,600, namely, \$1,520,500 stock and \$4,225,000 bonds of the Consolidated Telegraph & Electrical Subway Company, and \$190,100 stock and \$200,000 bonds of the Yonkers Electric Light & Power Company. Below is a condensed schedule of the miscellaneous investments of the company.

Miscellaneous Investments.

(1) Consolidated Telegraph & Electric Subway Co.	
Stock	\$1,670,000
Bonds	17,393,000
Total	19,063,000
(2) Empire City Subway Co.	
Bonds	769,000
(3) Yonkers Electric Light & Power Company.	
Stock	200,000
Bonds	200,000
Bills Rec.	595,700
(4) Edison Lt. & Pr. Installation Company.	
Stock	1,216,400
Advances	344,042
	163,187
Total items 2-5	3,488,329
Insurance Participation Certificates	710,226
Total all securities	\$23,261,555

Of course property which is not used for electrical purposes and has no direct connection therewith need not be considered in a rate case. Hence, the only items in the preceding list which need receive attention are the duct companies. These are distinct corporations and serve not only the Edison Company, but also other interests, and no question has been raised as to the propriety of the rentals which the Edison Company pays to them and includes among its operating expenses. It may be noted, moreover, that the income of the Consolidated Company, which is practically owned by the Edison Company, was adequate in 1913, to yield a return of about 6 per cent. on the securities held by the Edison

Company; as it is known that their securities represented in part discounts, the actual return on the cash investment indicated by the capitalization is more than 6 per cent. Obviously, the questions at issue in this proceeding will not be materially affected whether the property represented by the investment be excluded from the amount upon which the company is entitled to a fair return and the income from such investment be also excluded, or whether both the property and income be included. There is, therefore, no need at this time to consider the investment of the company in the duct companies.

Earnings.

Comparison of property with the earnings therefrom will be facilitated by reference to a table giving in comparative form the income accounts of the company for the period 1905-13. The figures are taken from the reports rendered by the company to the State Board of Gas and Electricity for the year 1905-06 and since that time to the Commission.

Our immediate concern is with the profitableness of the electrical business. Accordingly, there is shown below the profits from the sales of current, the amount set aside for depreciation and the profit on the electrical business after deducting depreciation.

Earnings From Electrical Operations.

	Profits from Operation be- fore Deprecia- tion.	Amount Set Aside for Renewals & Conting- encies.	Profits After Deprecia- tion.
7-1-1905-6	\$5,325,745	\$1,329,097	\$3,996,648
7-1-1906-7	6,920,880	1,721,413	5,199,476
7-1—12-1, 1907	3,502,720	916,024	2,586,696
1-1—12-31, 1908	8,025,876	1,884,831	6,141,036
1-1 to 12-31, 1909	8,907,521	2,164,819	6,742,702
1-1—12-31, 1910	9,747,348	2,381,483	7,365,865
1-1—12-31, 1912	10,360,089	2,989,853	7,370,236
1-1—12-31, 1913	11,000,398	3,197,666	7,802,732

These figures do not include certain items of rent and miscellaneous interest and other income which may be regarded as the earnings of the operative property and working capital. On the other hand, no deduction is made for the rental paid to the Brush Electrical Illuminating Co. and certain ground rents, these items representing payments for the use of property not included in the capital accounts. As these two classes of items are approximately equal, it will be convenient to use the figure for operating income above shown.

New York Edison Income and Surplus Accounts from July 1, 1905, to December 31, 1913.

	Year ended June 30, 1906	Year ended June 30, 1907	Six mos. 12-31-07	Year ended 12-31-08
Operating revenue	\$10,672,836	\$13,577,744	\$7,231,603	\$15,228,716
Revenue deductions:				
Operating expenses, Duct. rentals	\$4,744,242	\$5,918,772	\$3,233,080	\$6,085,631
Uncollectable bills	47,744	35,464	92,860	101,418
Taxes	555,105	702,628	402,943	1,015,800
Total	\$5,347,091	\$6,656,864	\$3,728,883	\$7,202,849
Operating income before depreciation	\$5,325,745	\$6,920,880	\$3,502,720	\$8,025,876
Depreciation	1,329,097	1,721,413	916,024	1,884,831
Operating income after depreciation	3,996,648	5,199,467	2,586,696	6,141,036
Non operating income	836,963	522,798	126,095	1,014,436
Total income	\$4,833,611	\$5,722,265	\$2,712,791	\$7,155,472
Int. and other income deductions	2,161,540	2,367,449	1,521,052	3,250,768
Net corporate income	2,672,071	3,354,816	1,191,739	3,904,704
Additions to surplus (d)	15,497	440,368	(d) 1,276	784,274
Surplus for year	2,656,574	3,795,184	1,190,463	4,688,978
Dividends		1,351,530	1,351,530	2,703,060

Surplus after dividends	2,656,574	2,443,654	(d) 161,067	1,985,918
Surplus at beginning of year	7,910,468	10,567,042	13,010,696	12,849,629
Surplus at close of year	\$10,567,042	\$13,010,696	\$12,849,629	\$14,835,547
Operating revenue	\$18,051,106	\$19,689,851	\$21,024,941	\$23,011,195
Revenue deductions:				
Operating expenses	\$5,933,599	\$6,950,082	\$7,919,865	\$9,200,243
Duct. rentals	1,096,072	1,189,691	1,303,363	1,416,188
Uncollectible bills	87,220	67,328	180,305	107,857
Taxes	1,115,543	1,270,052	1,261,320	1,286,509
Total	\$7,645,736	\$9,477,153	\$10,664,852	\$12,010,797
Operating income before depreciation	\$8,907,521	\$10,212,698	\$10,360,089	\$11,000,398
Depreciation	2,164,819	2,688,556	2,989,853	3,197,666
Operating income after depreciation	\$6,742,702	\$7,524,142	\$7,370,236	\$7,802,732
Non-operating income	1,004,030	1,080,564	1,166,071	1,250,562
Total income	7,746,732	8,604,706	8,604,706	2,782,318

	Year ended June 30, 1903	Year ended June 30, 1907	Six mos. 12-31-07	Year ended 12-31-08
Int. & other income				
deductions	3,026,925	2,695,028	2,670,637	9,053,294
Net corporate income	4,719,807	5,714,111	5,865,670	6,270,976
Additions to surplus.	78,159	634,375	118,265	711
Surplus for year	4,797,966	6,348,486	5,983,935	6,271,687
Dividends	2,703,060	2,897,100	3,009,204	3,009,204
Surplus after Div. . . .	2,094,906	3,451,386	2,974,731	3,262,483
Surplus at beginning of year	14,835,547	16,930,435	23,377,489	26,352,220
Surplus at close of year	\$16,930,453	\$20,381,839	\$26,352,220	\$29,614,703

The profits here shown are understated by reason of the fact that no corrections have been made for more than \$60,000 of tax abatements. The expenses charged by the company against revenue include taxes levied, and a considerable portion of these taxes is represented by the special franchise tax, which is seldom if ever paid without litigation or adjustment. As a result, the company has usually obtained reductions, which should be taken into account in making an accurate statement of the profits actually available for the payment of interest and dividends. There are also questionable items included in expense, which will be the subject of later comment. For the moment, however, these inaccuracies will be passed over. It appears that the Edison Company has for a number of years enjoyed earnings far in excess of the requirements of a fair return on the property devoted to the supply of electricity to the public. Thus, the profits of 1913 yield a return of 14.2 per cent. on \$55,000,000, the cost of the property as shown by the book records, less the depreciation reserve, plus an allowance for working capital; 13.0 per cent. on \$60,000,000, the maximum valuation of the property, allowing for appreciation of real estate; and 17.3 per cent. on \$45,000,000, the maximum amount of capital actually put into the Edison property by investors. Whatever the figure adopted for the value of the property, the conclusion is that the earnings have been excessive.

Annual Depreciation.

As already stated, the figures for profits here used are in accordance with the company's own statement. Certain deductions from revenue call for comment. The most important deduction by far is the amount set aside for depreciation or for renewals and contingencies. In 1913, an item of \$3,197,665.60 was entered with operating expenses, an amount equal to between 5 per cent. and 6 per cent. of the value of the company's property. It is more than one-eighth of the gross receipts and two and one-half times the amount expended for repairs and partial replacements. If the amount set aside is in excess of the actual needs for depreciation, the entire sum cannot be regarded as a proper expense, and the actual earnings are understated.

Under accounting regulations in effect January 1, 1909, the Commission requires a charge under operating expenses to cover

wear and tear not made good by repairs, obsolescence and inadequacy, such portion of the life of intangible fixed capital as has expired or been consumed, and "the amount estimated to be necessary to provide a reserve to cover the cost of property destroyed by extraordinary casualties." The Commission has not issued any orders prescribing the method of arriving at the amount to be set aside, leaving this for the time being to the judgment of the corporation, but requiring that it be based on a rule determined by the accounting corporation and filed with the Commission. "Such rule may be derived from a consideration of the said corporation's history and experience during the preceding five years, and the accrual may be on the basis of kilowatt hours sold." The company, by resolution of its Board of Directors, on May 31, 1905, set aside 1 cent per kw. hr. on current sold to general consumers "to cover deterioration, renewals, extraordinary wear and tear, replacements and other contingencies" to be credited to "renewals and contingencies." "The contingencies for which a reserve is desired," the resolution continues, "are:

"Deterioration in the value of wasting assets;

"Renewals for extraordinary wear and tear not otherwise covered in repair account;

"Replacing of apparatus in good condition with improved type of apparatus;

"Unusual accidents by explosion or fire in station or street;

"Fluctuation in volume of business and cost of materials."

This charge of 1 cent per kw. hr. on current sold to general consumers is in addition to the actual expenditures for repairs.

It should be observed that two of the items for which the company makes provision are not in accordance with the Commission's accounting Order. No charge can properly be made to operating expenses to provide for fluctuations in the volume of business and cost of materials. It is the function of the company's surplus account to take care of fluctuations in the volume of business, and the surplus of this company nearly \$30,000,000, accumulated in less than 14 years is certainly ample for this purpose. Materials are charged to operating expenses or to capital at cost. To enter a charge under operating expenses for fluctuation in the cost of materials is to introduce a double charge for the same thing.

In order to appreciate the significance of the charge for depreciation, it is desirable to compare the realized depreciation with the amount set aside as a reserve. The actual amount charged off for loss through realized depreciation, i. e., the wearing out, destruction, or abandonment of property over a period of nearly 13 years is \$7,507,729.51. At the close of 1913, the company's reserve stood at \$15,820,315.74. This means that \$23,328,045.25 has been charged to the consumer during this period, of which less than one-third has been required to make good the effect of depreciation dating not only from 1901, but from the beginning of the property.

Comparing the amount annually set aside for "renewals and contingencies" with the cost of the property, it is found that the company has steadily increased the percentage. Thus, in 1908, the amount reserved was 3.8 per cent. of the cost of the property, in 1913, it had raised to 4.8 per cent. The growth of the unexpended reserve has been particularly marked in recent years. In 1905, it was equal to 11 per cent. of the cost of the property; in 1908, 16 per cent.; in 1913, 23 per cent. These figures are very significant, particularly as part of the investment is in land which appreciates rather than depreciates; part is in structures with a very long life; and a large part in copper, on which the actual deterioration is very slight. It is probable that more than the necessary amount has been charged to operating expenses, but if the figures of the company are allowed, it certainly has no just ground for complaint.

Complainants called attention to many questionable items included by the company, such as its contribution towards the publication of a journal conducted in opposition to municipal ownership. If the company makes donations for political or semi-political purposes, it should charge them to profit and loss, not to expense accounts paid by the consumers.

I conclude that the profits of the company are far more than the statutory requirement of "a reasonable average return upon capital actually expended" with due regard "to the necessity of making reservations out of income for surplus and contingencies."

Profits to Stockholders.

To grasp the full meaning of the present earnings of the com-

pany, let us consider what is the return actually obtained by the holders of the securities in the hands of the public representing the equity in the Edison property after deduction of bond interest. The capital stock of the Edison Company is not in the hands of the public, but is held by the Consolidated Gas Company, with the possible exception of 100 shares, and is represented in the issued for the acquisition of the stock of the New York Gas & cost of the Edison stock to the Consolidated Co. is \$15,517,200 in the securities which the Consolidated Gas Company originally issued by the acquisition of the stock of the New York Gas & Electric Light, Heat & Power Company, subsequently exchanged for Edison stock, and \$5,103,650 in cash, for which the Consolidated Co. has obtained authority from this Commission to reimburse its treasury by the issue of debentures convertible into stock at par.

The net earnings applicable to this investment are shown in the following table. It will be noted that in the period of 13 years, 1901 to 1913, the average yearly rate of earnings has been 23 per cent., upon the average par value of the securities and cash standing for its investment in the Edison stock. The Consolidated Gas Company received in dividends during the 6-year period, 1907-13, \$20,033,892, or practically 100 per cent. Besides paying these dividends, the Edison Company accumulated a surplus in 13 years equal to about 150 per cent.; and during the past 6 years the earnings have been at the rate of 30 per cent. of which one-half has gone to the Consolidated Gas Company in the form of dividends and one-half has been added to the Edison surplus.

It should be noted that the earnings of the stock cover not only the income from electrical operations but also the income from security investments of the Edison Company. The income from the latter is, however, comparatively small. Moreover, if the interest charge be apportioned against operating and non-operating income on the basis of the relative investment in operative and non-operative property, the share of non-operative income in the total earnings of the stock becomes of very limited significance. The earnings of the stock here shown are substantially the earnings from the electrical operations of the Edison Company.

It may be claimed that the market value of the stock of the

Consolidated Company at the time it secured control of the Edison system was in excess of par, that the Edison stock received in exchange was not worth more than \$15,517,200 originally. The discussion of the relative value of these stocks would lead us far afield. It is certain that the earnings applicable to the Consolidated stock now outstanding on account of the purchase of the Edison stock are at a very high rate in spite of the fact that only ten per cent. of the Edison stock was issued for cash (90 per cent. representing capitalization of prospective earnings) and that all of it comes after an interest-bearing indebtedness of \$55,500,000, of which 20 per cent. likewise represents the capitalization of prospective earnings.

Going Value.

Two points remain for consideration in connection with profits and earnings; going value, and the entries standing originally on the books for licenses under Edison patents and patent rights.

Counsel for the company repeatedly stated that among the elements to be considered in determining the valuation on which the company is entitled to a fair return, is an allowance for "going value." It is not necessary to enter here upon a discussion of going value. The point has been decided by the highest court in the State in the *People ex. rel. Kings County Lighting Company v. Willcox et al.* (210 N. Y. 478; 158 Appellate Div. 603), and it will suffice to quote from that decision:

"The first question * * * was whether the company had already received a fair return on its investment. If it had received such return from the start, or if in later years it had received more than a fair return the public would already have borne the expense of establishing the business in whole or in part and to that extent the question of 'going value' for the purpose of fixing a present rate would be eliminated; for it must constantly be kept in mind in dealing with this problem that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter. If it did not receive a fair return in the early years owing to the establishment of the business, a subsequent rate must allow for that loss or it will be confiscatory."

The investment, including the amount entered for patent rights, in the original electrical companies merged in the present Edison Company was at the maximum in round numbers \$24,000,000. There is serious doubt whether this amount represented actual cash or property at cash value, but this question may be waived. The additional investment in the Edison Company, exclusive of expenditures made out of earnings, evidenced by the records of the present corporation and in regard to which there is no question, is \$21,050,000. Whether all of this money went into the Edison plant and distribution system is by no means certain. It would seem just to consider that part of it at least was invested in securities of other companies, but this point, too, may be waived. The maximum amount of capital that could have been contributed by investors for the purpose of building up the Edison property used for supplying current to the public is less than \$45,000,000.

Turning to the question of earnings, the record shows that for the period, July 1, 1906, to December 31, 1913, the earnings of the Edison Company from electrical operations available for a return to security holders, i. e., stockholders and bondholders, were more than \$55,000,000. The surplus of the Edison Company on June 30, 1905, was \$7,910,468, after payment of interest on outstanding bonds, etc., for the period May 1, 1901, to June 30, 1905. The earnings for that period were at least \$15,000,000 or \$16,000,000, of which certainly more than \$10,000,000 came from electrical operations. The total earnings of the Edison Company since May 1, 1901, were thus in excess of \$65,000,000.

The capital invested in 1901 was \$24,000,000, at a maximum. On July 1, 1905, this had been increased to about \$28,000,000; in 1910, to about \$40,000,000; at the close of 1913 it stood at approximately \$45,000,000. The average annual investment for this period was less than \$33,000,000, and the average annual return was over \$5,000,000, or at the rate of 15 per cent. per year. The earnings of the Edison Company from electrical operations have thus been more than twice the amount required to yield a fair return on the maximum investment during the period from 1901 to 1913, inclusive.

If 7 per cent. is taken as a fair rate of return, the earnings between May 1, 1901, and December 31, 1913, have been \$35,000,-

000 in excess of the amount required to yield a fair return on the maximum capital invested. The investment in 1901, as noted before, is taken as \$24,000,000, of which, according to the record, \$4,000,000 were introduced in 1899 or thereafter; therefore, the investment in 1899 was about \$20,000,000. The earliest of the electrical corporations absorbed in the Edison Company received its franchise in 1881. If the investment for the period 1881-1901 be taken as \$12,000,000 on the average, the earnings of the Edison Company since 1901 in excess of a 7 per cent. rate have been equal to an annual return of 15 per cent. for the entire period 1881-1901. Suppose we accept the extreme and absurd assumption that the capital investment in 1881 was the same as in 1899, or \$20,000,000. On this basis, the earnings since 1901 in excess of a 7 per cent. return are equal to an average annual return of between 8 and 9 per cent. on the capital invested for the entire period 1881-1901.

If 8 per cent. be assumed as a proper rate of return, the Edison Company since 1901 has earned \$31,000,000 in excess of a fair return. If the average investment for the period 1881-1901 is assumed to be \$12,000,000, the earnings in excess of 8 per cent. since 1901 have been equal to an average annual return of 13 per cent. for the entire period 1881-1901. On any reasonable assumption as to the capital invested during the period 1881-1898, the earnings since 1901 have been far in excess of the requirement of an average annual return of 8 per cent.

These calculations are based on the assumption that the investor received no return at all during the twenty years before the present Edison Company was formed, an assumption contrary to the facts. The record shows that the old Edison Company paid interest on \$6,500,000 of bonds and dividends in 1899 and 1900 at the rate of 6 per cent. and was nevertheless able to make additions to the accumulated surplus, which stood at \$2,866,092 at the time of consolidation in 1901. The net earnings for the stock were in fact so well established that at the formation of the present Edison system in 1899, the old Edison stock was exchanged at the rate of \$220 in 4 per cent. bonds for each share (\$100) of stock, the new fixed charge being equivalent to dividends at the rate of 8.8 per cent. on the stock. The North River Electric Light &

Power Company closed its books by distribution to its stockholders \$64,000, or 16 per cent in dividends.

From these facts it is certain that the earnings of the Edison Company have been sufficient to pay investors more than a fair return on the capital actually invested for the entire period of operation. Therefore, following the decision of the Court of Appeals in the Kings County Lighting Company case, there is nothing to be added to the operative property for "going value." The public has already borne the cost of establishing the business.

The question of including patent rights among the property upon which a fair return is to be allowed in the future, may be disposed of in a few words. Reference has already been made to the fact that they were excluded by the Legislative Committee of 1905 and by State commissions in similar cases. There is also grave question whether they have not expired and ceased to have any value. In view of these facts, and the further fact that earnings have been ample to permit the amortization of whatever investment they may have represented, it is concluded that no allowance need be made for a return upon patents in fixing the rates for the future.

Yield by Rate Classes.

Having found that the earnings of the Edison Company have been and are excessive, it now becomes necessary to examine the different rates and the earnings under each classification. These proceedings originated in the complaint that the retail rates were excessive and that the rates charged to certain wholesale customers and to other large users of current were too low and discriminatory. The propriety of the rates paid by New York City was not here made an issue. The questions are, therefore, primarily whether the retail rates now in force are too high, and whether the differences in wholesale and retail rates constitute unlawful discrimination.

The accompanying table shows in condensed form the chief rates charged by the company and the revenue received under the various rates.

Rates for Electricity and Revenue by Rate Classifications.

	Number of Customers.	Rates maxi- mum.	Cents mini- mum.	Current kilowatt hours.	Average price, cents.
General rate ..	117,753	10	5	169,881,626.3	8.041
Power	13,983	9½	5	24,840,264.6	8.471
Wholesale . . .	471	5	3	91,890,301.8	3.971
Storage battery	102	5	2	3,478,864.8	4.206
Miscellaneous .	435	a	a	1,832,415.6	7.355
City — Retail:					
General . . . . .	.....	6½	6½	3,633,287.0	6.523
Power . . . . .	.....	6	6	283,662.1	6.000
Wholesale ..	.....	5	3	4,854,507.3	3.900
High pres- sure fire service . . .	1	b	b	843,300.0	10.038
Street light- ing . . . . .	.....	b	b	24,753,350.0	3.472
Aqueduct, etc. .	9	b	b	22,454,438.9	1.560
Third Ave. Ry. Co.	1	c	c	123,098,460.0	.517
Other St. Ry. & Elec. Cos..	6	a	a	68,184,299.0	1.331
Total	132,761			540,028,777.4	4.255

Revenue.

General rate	\$13,661,015.15
Power	2,104,199.58
Wholesale	3,649,053.49
Storage battery	146,324.66
Miscellaneous	134,782.64
City — Retail:	
General	236,985.40
Power	17,019.57
Wholesale	189,344.96
High pressure fire service	84,649.50
Street lighting	859,467.89

Aqueduct, etc.	352,313.98
Third Ave. Ry. Co.	636,902.40
Other St. Ry. & Elec. Cos.	907,376.55

Total \$22,979,425.77

a. Various rates.

b. Not based altogether on kw. hr. rates.

c. Rates based on a contract and are affected by provisions therein relating to the operation of 3d Ave. power house by the Edison Company.

Examination of the table shows that the total revenue from the sale of current in 1913 was \$22,979,425. Of this amount, the sales to private consumers at retail rates for general and power uses were \$15,765,215, or approximately 70 per cent. Wholesale sales (including storage battery) to private consumers were \$3,795,367, or less than 17 per cent. The sales to private consumers at wholesale and retail rates were together \$19,560,582, or more than 85 per cent. of the total. Sales to the city for all purposes amounted to \$1,387,467, or 6 per cent. The greater part is of course paid for street lighting; nevertheless \$254,005 were paid for current at rates comparable with retail rates, and \$189,345, at wholesale rates. The figures for wholesale and retail rates may be condensed as follows:

Sales at Retail and Wholesale Rates.

	Private Consumers.	City.	Total.
1. Kw. hrs.			
Retail	\$194,721,891	\$3,916,949	\$198,638,840
Wholesale	95,369,166	4,854,507	100,233,673
	<hr/>	<hr/>	<hr/>
Total	\$290,091,057	\$8,771,456	\$298,862,513
2. Revenue.			
Retail	\$15,765,215	\$254,005	\$16,019,220
Wholesale	3,795,368	189,345	3,984,713
	<hr/>	<hr/>	<hr/>
Total	\$19,560,583	\$443,350	\$20,003,933

3. Average price per kw. hr.

Retail	8.096 cents	6.485 cents	8.064 cents
Wholesale	3.980	3.900	3.976
<hr/>			
Total	6.743 cents	5.054 cents	6.693 cents

It will be noted that the revenue from retail sales is approximately four times as great as that from the wholesale business, in spite of the fact that the volume of current sold is only twice as great. The average price realized on retail current is over 8 cents or more than twice the average wholesale price of less than 4 cents.

The significance of the wholesale and retail schedules is even greater for net profits than for gross revenue. Aside from street lighting, the remaining revenue to the company is from the sale of high-tension current, the total revenue from this source being \$1,896,592. Four-fifths of this business is with the Third Avenue Railway Company and other street railway or electrical corporations. The current supplied to the Third Avenue Company is sold at the switchboard and is bound up with the use of its generating plant by the Edison Company. The price is, accordingly, very nearly the cost of generating current. Sales at the switchboard to the United Electric Light & Power Company account for most of the remaining current. Sales of high-tension current at low rates to contractors for aqueduct work and the like yield a limited revenue. The profits of the company come substantially from sales of low-tension current at wholesale and retail rates and from city purchases.

Are Retail Rates Excessive?

The retail rates begin at 10 cents. This is the price charged for the first 250 kw. hrs. per month. As the quantity of current taken increases, the rate declines until at 8,000 kw. hrs. per month the rate becomes 5 cents (for customers supplying their own lamps). The power rate is 9½ cents for the first 200 kw. hrs., but this is substantially the 10-cent general rate, as power customers do not receive free lamp renewals. The wholesale rate begins with 5 cents for the first 100,000 kw. hrs. per year. For the second 100,000, it is 3 cents. To very large customers using

833,333 kw. hrs. per year the rate is 3 cents. For current for storage battery use, the lowest rate is 2 cents. Between the highest and the lowest retail rate, after allowing for lamp renewals, there is a difference of $4\frac{1}{2}$ cents. Between the maximum retail and minimum wholesale rate, there is a difference of $6\frac{1}{2}$ cents. These rates apply to the same kind of low-tension current for lighting or power uses. The small customer pays three times as much per kw. hr. as the very large customer.

A comparison of these rates raises two questions:

1. Are the retail rates taken as a whole in comparison with the wholesale rates just, or is there unjust discrimination?
2. Are the differences in rates charged under the retail schedules unlawfully discriminatory?

The complainants contend that the retail rates are excessive and that the rates given to other customers involve unjust discrimination against the retail consumers. The company in defense of its rates contends that the cost of supplying retail consumers is very much higher per kw. hr. than the cost of supplying wholesale customers. It does not, however, base its defense of its rate schedule, altogether on differences in cost of service, but appeals also to other considerations, such as the value of service and and the general commercial principle of lower prices for purchases on a large scale. In justification of the high rate charged to small customers under the retail rate, the company urges the high cost of serving the small consumer, a cost which for the most part must be incurred for each customer regardless of the amount of current taken.

The first point to be considered here is the complaint that retail rates in general are excessive, and that in comparison with the wholesale rates they are discriminatory. The company presented data showing the cost per kw. hr. of serving customers under the retail rates as compared with the cost of service to wholesale customers. According to this information, the cost of service per kw. hr. to the retail customer was 5.21 cents as compared with a cost of 2.08 cents for wholesale customers. These results were arrived at by making apportionments of many items of expenses jointly incurred between the wholesale and retail business, charging to the latter twice or three times as much per kw. hr. as to the former.

For some of these calculations there is no definite basis; they are merely matters of opinion. It is not necessary, however, to go into the details, however, except to point out that the figures above given were based on costs for 1910, which were larger than the corresponding unit costs for 1913. Subtracting from the revenue of the two classes in 1913, the cost according to the company's estimate for 1910, which is too large, the profit from the sale of current to retail consumers in 1913 would be \$5,670,000 as compared with a profit of \$1,900,000 from sales to wholesale consumers.

	Retail.	Wholesale.
Sales kw. hrs.....	198,638,840	100,223,673
Revenue	\$16,019,220	\$3,984,713
Estimated cost per kw. hr.....	5.210c	2.080c
Total cost	\$10,349,084	\$2,084,652
Profit	\$5,670,136	\$1,900,061

On the company's own showing, the revenue from sale of current to retail customers (less than two-fifths of the total) yields a profit, after deducting all expenses, larger than the amount required for a fair return on the capital used for the entire business. But it would clearly be unjust to require the retail business to carry the entire capital; a fair return on part of the capital should be charged against the profit on the wholesale and other business. The rates under the retail schedule taken as a whole are, therefore, excessive.

It should be observed that the figures for cost here used are probably unduly favorable to the wholesale business. They indicate a difference in operating expenses of 3.13 cents, yet the operating expenses of an electrical company are mainly joint costs, i. e., costs incurred for the total business, and few can be directly assigned to the retail business. In the accompanying table, the total operating expenses of the New York Edison Company are shown in condensed form.

Expense — Edison Company — 1913.

Production expenses	\$3,335,175.69
Transmission expenses	404,164.90
Storage expenses	30,557.60

Distribution expenses:

General distribution expenses.....	133,539.38
General distribution system repairs....	243,064.11
Setting and removing meters & trans- formers	674,874.63
Repairs of electric services and trans- formers	160,417.58
Meter operation and repairs.....	198,724.18
Total distribution	\$1,410,619.78

Utilization expenses:

Commercial, arc and incandescent in- stallation and renewals.....	599,173.36
Inspection of consumers' premises & re- pairs of consumers' installations.....	260,743.03
Municipal street lighting expense.....	135,563.63
Total utilization expenses.....	995,480.01
Commercial administration expense.....	586,118.00
Promotion expense, advertising, etc.....	776,886.18
General expense.	1,641,241.37
Contingent expense (renewals & contingency re- serve)	3,197,665.60
Subway rental	1,416,188.07
Taxes	1,286,508.58
Uncollectible bills	107,856.69

Total operating expenses, taxes, etc.....\$15,208,462.47

Of the \$15,208,462.47 charged as expenses, the items which one would select as most likely to relate mainly to the retail business are the following:

Repairs of services and transformers.

Setting and removing meters and transformers.

Meter operation and repairs.

Lamp installation and renewal.

Inspection of consumers' premises and repairs of consumers' installations.

Commercial administration.

Uncollectible bills.

These amount in all to \$2,587,907, or only one-sixth of the total expense. The only one of these items which may be charged entirely against the retail business is the expense of supplying

lamps. A portion of each of the other items should be charged against the wholesale business. In its cost calculations, the company charged retail business 1.044 cents as against .068 charged to wholesale business for all of these items, except uncollectible bills. According to these figures, the difference between the cost of current to the wholesale and retail customers is less than 1.1 cents per kw. hr., after charging all uncollectible bills against retail sales. From the data submitted by the company it appears that the expenses which could be charged entirely to the retail business amounted to less than one-half cent (.4587c), and that all other expenses were in part chargeable to the wholesale business. To what extent other items should be charged at a higher rate to retail business is admitted by the company to be a matter of opinion.

Similarly, most of the property is used for the entire business, and little is solely devoted to a single class of consumers. Even in the case of meters and services, which are probably the two classes having the highest percentage attributable to retail business, part of the property is used to serve wholesale consumers. The definitely ascertainable difference in the charge to be made as between the wholesale and the retail business for depreciation and for a fair return on the investment is small.

Whatever may be the exact difference in cost of current between the retail and the wholesale business, the facts submitted in evidence do not justify a difference of 4 cents between the average retail price and the average wholesale price.

The company's rate schedules indicate clearly that they are not based on cost. The system is in effect a system of discounts for quantity within each rate class. The wholesale and retail rates take no account of installations, the extent to which they are used, the time of use, the maximum demand of the customer, or the relation of that maximum demand to his total consumption or to the peak load on the company's system, or any other factor other than quantity. This fact appears most strikingly in that the company allows landlords to combine the business of their tenants and to buy current in bulk at a rate far below the rate to individual tenants. Under this plan, the company furnishes and reads the tenants' meters. Instead of separate bills for each ten-

ant, it presents to the landlord or his agent a statement giving the readings of all meters. One case is given in the record where current was supplied at the wholesale rate for 124 meters at less than 5 cents per kw. hr. If the tenants had purchased directly from the company, they would have been obliged to pay at retail prices as high as 10 cents. The only saving to the company is the slight expense of collection. Under another contract rider, the landlord or lessee may go even further and have "the electric current consumed by the tenants * * * credited to the consumption of 100,000 kw. hrs. annually" required to entitle the customer to the wholesale rate, with the understanding that "the accounts of the tenants shall have no other relation to this contract."

In *Western Union Telegraph Company vs. Call Publishing Company*, 181 U. S. 92, The United State Supreme Court laid down the rule that

" * * * All individuals have equal rights both in respect to service and charges. Of course, such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. There is no cast iron line of uniformity which prevents a charge from being above or below a particular sum, or requires that the service shall be exactly along the same lines. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination."

Retail Rate Schedules.

The general retail rate schedule, as noted above, consists of a series of "step rates" with 10 cents as the maximum for the first 250 kw. hrs., and 5 cents as the minimum, which is not obtained until a consumption of 8,000 kw. hrs. per month is reached. The latter does not include lamp renewals, for which an allowance of one-half cent is made. The difference between the highest and lowest rate is accordingly 4½ cents. The rates for power show

similar differences. The initial rate is $9\frac{1}{2}$ cents for the first 200 kw. hrs., which is the general rate of 10 cents less than one-half cent for lamp renewals. The minimum rate is 5 cents. The most important class of consumers under each schedule is composed of these paying the maximum rates. This is evident from the table below showing the data for April, 1912.

Sales and Revenue Under Retail Schedules.

	Sales (Kw. hrs.)		Revenue		Percent of Sales Revenue
	Total	Highest rate class	Total	Highest rate class	
General	12,872,739.4	4,261,242.0	1,082,995.58	426,124.20	.3310 .3935
Power	2,556,518.6	609,676.0	211,668.74	57,919.22	.2383 .2736
Total	15,431,258.0	4,870,918.0	1,294,664.32	484,043.42	.3157 .3739

The number of customers paying the 10-cent rate in April, 1912, was 84,436 out of 93,343 under the general rate. Under the power rate, 10,303 paid the maximum rate of 9½ cents. In all, 94,739 customers out of a total of 108,054, or nearly 90 per cent. of all of the company's customers, were paying the maximum rates. If the figures for April be taken as typical, it will be seen that these customers alone took about one-third of the current and contributed about two-fifths of the total revenue from retail sales for 1912.

The present statutory maximum of 10 cents per kw. hr. has been in force over nine years. During this time the company has made many changes in its schedule of rates, but none of them has affected the small consumer under the general rate. He is paying as much today as he paid over nine years ago. The only reduction in rates which has approached the small consumer is the one made in the summer of 1911, when the company, after frequent urging by the Commission, altered its schedule considerably. Power consumers using less than 200 kw. hrs. per month obtained a reduction of one-half cent per kw. hr. (from 10 cents to 9½ cents) and consumers under the general rate were able to get a reduction on their monthly consumption when it exceeded 250 kw. hrs. The former was merely an equalization of rates, for power customers did not obtain free lamp renewals; and if one-half cent per kw. hr. is a proper allowance for lamp renewals, the power customers should not have paid more than 9½ cents after the Act of 1905 went into effect. Since 1905, persons consuming less than 250 kw. hrs. per month have paid 10 cents per kw. hr. and have not had even a small reduction in this rate for nine years. But the cost of electrical service has decreased. Comparing the figures for 1905-6 (the first year under the maximum fixed by the Legislature) and 1913, it appears that the cost of producing current has been reduced one-third and that the entire cost of supplying current, including a fair return on the investment, is doubtless below the figure upon which the Legislature fixed a maximum rate of 10 cents. These facts strongly suggest that in a readjustment of rates the smaller consumers under the general and power rates are entitled to first consideration.

In justification of the high charge to small consumers the company has urged that the cost of serving these customers is very high in proportion to the amount of current used, there being certain expenses which are almost constant regardless of the amount of current consumed. These are said to be the cost of indexing meters, collecting bills, keeping accounts and records, maintaining a meter bureau, stationery, meter installation and removal, shunt losses, interest on meter cost, depreciation, etc. Under the present schedule, these expenss are not charged for separately but are covered by the rates. To determine the reasonableness of the existing rates, it is necessary to examine the evidence submitted upon this point and to consider whether expenses of this character should be covered up in the charge for current or met by a separate charge per customer or meter or by a minimum charge. The latter methods are used by many companies and have received the sanction of a number of commissions.

Customer or Meter Costs.

The company submitted data to show the direct capital outlay and annual expense of serving customers, differentiating between the cost where one customer is connected by a separate service and where two customers are supplied from the same service. The following is a summary:

Capital Outlay.

	Cost with one customer to a service.	Cost with two customers to a service.
Subsidiary pipe	\$25.20	\$12.60
Cable, incl. connecting to mains	17.67	8.84
Interior service wiring, incl. cut out, etc.	14.53	10.00
Meter	13.47	13.47
Cost, incl. meter	70.87	44.91
Cost of first installation of in- candescent lamps (average 25)	3.93	3.93
Total	<hr/> \$74.80	<hr/> \$48.84

Annual Charge Including Interest and Depreciation.

Six per cent. interest and 10 per cent. depreciation on service pipe, cable, service, wiring, etc.	\$9.18	\$5.03
Six per cent. interest and 10 per cent. depreciation on meter.	2.16	2.16
Six per cent interest and 20 per cent. depreciation on lamps of first installation	1.02	1.02
Meter inspection, tests, repairs, etc.	1.44	1.44
Indexing, collecting, accounting and miscellaneous expense	3.10	3.10
Total annual charge for one customer per year..	\$16.90	\$12.75

The conditions of supply current to consumers in New York are such that little attention need be given to cases where a service is used exclusively for one customer. The company reported that on January 1, 1912, the average number of consumers per commercial service (excluding municipal services) was 2.041 in Manhattan and 2.348 in the Bronx. The indications are that the ratio at the close of 1913 was actually higher. It appears also that the average number of meters per commercial service is 2.6. Thus, the usual situation is at least two customers to a service, and more than two meters to a service. It is well known that many of the small customers are tenants in apartment houses where the number of customers to the service is high. The data to be considered, therefore are principally the figures purporting to show that the annual direct cost per consumer is \$12.75.

However, the first item should be excluded entirely for as a rule, services are not installed for individual customers but for a group. With conditions obtaining in New York the cost of the service and service connections should more properly be treated not as a charge against the consumer but as a charge to general capital, similar to the mains installed for bringing current to the consumer.

The company also includes interest and depreciation on lamps.

These items, however, very generally with the amount of current consumed and the size of the customers' installation. They should not be included here.

Meter interest and depreciation are computed upon a higher average cost per meter than is shown by the company's report to the Commission. The rate of depreciation is based on a ten-year life, straight line method. The life of the meters is more than ten years, and when condemned they have a considerable salvage value. Both depreciation and interest charges are, therefore, too high.

The commercial administration expense includes certain charges which cannot be strictly assigned to customers on a meter basis. On the other hand, one item not included in the company's statement given above is the shunt loss in the meter, and allowance should be made for this loss. It may be observed, further, that every item of expense included in the consumer or meter charge should be excluded from the rate for current.

Taking into account differences in cost of meters of different sizes and all other considerations affecting this subject, a schedule of charges per meter starting with 50 cents and going up to \$1.00 per month would fairly cover the expenses which are constant and do not vary with the amount consumed. As a very large part of these expenses is directly connected with the meter, and varies directly with the number of meters, it is considered that a charge per meter is the proper basis particularly in view of the conditions that exist in Manhattan and the Bronx.

The problem of a proper meter charge and the fixed expense that is incurred regardless of the amount of current taken came before the Commission in the case of the United Electric Light & Power Company and was there considered at length. It will suffice to refer to my opinion in that case, and in order to appreciate the importance of the conclusions there reached and their relevancy to this case, the relation between the two electric companies supplying electricity generally in the Borough of Manhattan should be understood. These two companies — the United Electric Light & Power Company and the New York Edison Company — are controlled by the Consolidated Gas Company, which owns practically all of their outstanding capital stock. They do not have parallel

mains in all streets, but in a large proportion of Manhattan Island consumers have the option of being served either by the Edison Company or by the United Company. In the part of Manhattan north of 136th Street the United Company is the only company having a system of mains for general distribution and in the Borough of the Bronx, west of the Bronx River, the Edison Company is the only company offering service.

The rates of the two companies are almost identical; the differences are not numerous and generally relate to matters of detail. It is obvious that this condition will probably continue in view of the single control, and the officials of both companies have stated that as a practical matter the rate schedule must be the same wherever conditions are similar.

In the fall of 1913, after a decision had been rendered in Case No. 1638 (See *Knight v. United Electric Light & Power Co.*, 4 P. S. C. R., 1st Dict. N. Y. 375), the United Company instituted a meter charge of 75 cents or \$1.00 per month per meter according to capacity. Prior to that time neither the United Company nor the Edison Company had made such a charge. Complaint was soon made by certain persons to whom the charge applied and after hearing I submitted an opinion having reached the conclusion that the charges of the United Company were too high and that reasonable charges for watt-hour meters would be as follows:

Per. mo.

For meters having a capacity of 1.5 kilowatts or less..... \$.50

For meters having a capacity of from 1.5 to 10 kilowatts... .75

For meters having a capacity of over 10 kilowatts..... 1.00

I concluded that if a meter charge is to be instituted, it should be made to apply to all customers, subject only to the limitation imposed by the Legislature, viz., that in no case shall the total amount to be paid by any customer (for meter and current charges) exceed 10 cents per kw. hr. of current consumed.

As a practical matter, if the United Company is to establish such rates, the Edison Company must follow its example, and the officials of the Edison Company have freely stated that the final decision in Cases No. 1789 and No. 1800 must be followed by the Edison Company; otherwise customers required to pay a meter

charge by the United Company would immediately cancel their agreements with the United Company and apply for service to the Edison Company, if current could be obtained. On the other hand, if the Edison Company were to charge a higher rate, consumers of the Edison Company affected by such rate would leave the Edison Company and go to the United Company.

Further, an analysis of the evidence in this case and a comparison with the figures in the United cases, allowance being made for difference due to varying types, indicate that the scale of charges found reasonable for the United Company will also be adapted to the conditions under which the Edison Company operates.

Yield of Meter Charge.

The adoption of this schedule will of itself increase the net income of the Edison Company. The exact amount cannot be determined from the facts of record, but if every customer had paid such a meter charge in addition to the rate for current, the earnings of the Edison Company would have been increased about \$1,200,000 in 1913. But there are certain deductions to be considered before the net increase can be determined.

If a meter charge were to be levied upon all customers, the current charge plus the meter charge would, in certain instances, exceed the maximum limit imposed by the Legislature. For example, the customer who uses during a month 10 kw. hrs. would pay \$1.00 according to the present schedule of rates. If a meter charge of 50 cents were imposed and the rate for current left at 10 cents per kw. hr. he would pay \$1.50, or 15 cents per kw. hr. If the current rate were reduced to 7 cents, he would pay a total amount of \$1.20 or 12 cents per kw. hr. or 20 cents more than under the present rates. It is obvious that no matter how much the current charge be reduced, some persons would pay more than 10 cents per kw. hr. or that the number of persons in this class would depend upon the amount charged for current, the number decreasing as the current rate decreases. The line is crossed at 25 kw. hrs. under an 8 cent rate, 16 2-3 kw. hrs. under a 7 cent rate, 12½ hrs. under a 6 cent rate, and 10 kw. hrs. under a 5 cent rate, customers using these amounts paying the same under the present schedule and under a schedule requiring a meter charge of 50 cents per month and a current rate of 8, 7, 6 or 5 cents per kw. hr.

If, therefore, the schedule of meter charges given above were to be established, and the Commission were to reduce the maximum rate for current to 7, 6 or 5 cents, a considerable number of small consumers would be required to pay higher rates than at present, unless at the same time the present maximum of 10 cents per kw. hr. fixed by the Legislature in 1905 is continued as a maximum limit for the total of current and meter charges. Perhaps the present law would remain in force and would prevent the company from charging more than the present maximum, although part of the amount collected might be called a meter charge. But the order in which case should leave no doubt upon this point, and it should specifically provide that in no case may the total amount paid by any customer exceed 10 cents per kw. hr.

It follows that from consumers using less than 17 kw. hrs. per month, the Edison Company will not collect the full meter charge under a 7-cent maximum current rate; or from those using less than $12\frac{1}{2}$ kw. hrs. under a current rate of 6 cents. Hence in estimating the revenue to the company, allowance must be made for this factor. Among the many calculations and figures that have been placed in the record, there is none which gives the number of meters used by customers who consume less than 17 or $12\frac{1}{2}$ kw. hrs. per month. But there is a statement of the company that for the year ended August 31, 1912, there were 10,000 customers with average bills of less than 65 cents per month, or less than \$8.00 for the year, and that there was a total of 28,000 customers from whom the company derived an average of less than \$1.50 per month, or \$16.86 per year. The company also submitted similar data for the month of April, 1912, for both lighting and power customers. Under the present rates, these customers pay 10 cents per kw. hr. and a bill of \$1.50 per month indicates a use of 15 kw. hrs. But an average consumption of 15 kw. hrs. per month means that at times a higher rate of consumption is reached and that certain consumers use more. Now, whenever the current used reaches 17 kw. hrs. or exceeds it, the company increases its revenue by the amount of meter charge under a 7-cent maximum. Under a 6-cent rate, the increase in revenue on account of the meter charge occurs whenever the consumption goes beyond $12\frac{1}{2}$ kw. hrs. The number of customers using less than 17 kw. hrs. may be estimated at 25,000 to 30,000 and the number using less than

14 kw. hrs. at 20,000 to 25,000. As this class of customers seldom use more than one meter, an estimate of the number of meters in use by consumers taking less than 17 kw. hrs. per month in 1913 at between 30,000 and 35,000 is probably too high. This number at a charge of \$6.00 per year would yield about \$200,000, and the maximum reduction from the gross yield from meter charges (\$1,200,000) would, therefore, be about \$200,000 under a 7-cent rate, and less under a 6-cent rate. But while none of them would pay the entire meter charge of 50 cents per month, every one would pay something more than the current charge, under a 7 or 6-cent rate. The amount paid would be 4 cents per kw. hr. if the current charge were 6 cents, and 3 cents if the rate for current were 7 cents.

The total amount in excess of the charge for current collectible from customers using less than 17 or 12½ kw. hrs. cannot be accurately estimated from available data, but it would be a considerable sum. The evidence shows that for the year ended August 31, 1912, there were more than 10,000 customers whose bills averaged under 65 cents per month or \$8.00 per year. This group alone would have paid \$23,000 upon the basis of 7 cents. Those with larger bills would manifestly have paid more. The total from the 30,000 meters would probably have been about \$100,000 for 1913.

Conservatively estimated, the net yield from a schedule of meter charges of 50c, 75c and \$1.00 per month according to capacity would mean an increased return to the company of over \$1,000,000. But, as already demonstrated, the present earnings of the company are excessive and unreasonable, and the addition of a schedule of meter charges would make them still more unreasonable and would require a lower rate schedule than would be just without any meter charge. The reduction of the current charge from 10 cents to a lower rate becomes imperative. Further, if the fixed items are covered by a meter charge, the principal argument for a schedule of wide differential rates, based up on the amount of current consumed, has been removed; at least there is not sufficient basis left for the great differences in the present rates between customers who use 200 and those who use 2,000 kw. hrs. Thus, we are forced to the conclusion that the current charge must be materially reduced, not merely in order that the present excessive profits be decreased, but that justice may be done between different classes of customers.

Effect of Lower Rates on Company's Revenue.

In view of the various facts and considerations already noted, it is necessary to consider what would be the effect of a maximum charge for current of 6 or 7 cents, in connection with a meter charge of from \$.50 to \$1.00, the combined current and meter charges not to exceed 10 cents per kw. hr.

The first important fact to be noted is one which already has been stated, i. e., that the company's income from customers under all contracts except two — the general rate and the power rate — will not necessarily be affected by the reduction of the current charge to 6 or 7 cents. Further, under these two rates, large amounts of current are sold at less than 6 cents per kw. hr., and those would not be directly affected by an order fixing the maximum at 6 or 7 cents. Indeed, the only consumption of current at 6 or 7 cents. Indeed, the only consumption of current affected by a 7-cent maximum would be that sold at 10, 9 and 8 cents under the general rate and at 9½ and 8 cents under the power rate and under the present schedule of charges, no customer pays less than 7 cents for any part of the current he consumes, unless his consumption exceeds 750 kw. hrs. monthly under the general rate or 400 kw. hrs. under the power rate.

To determine exactly the effect upon the Edison Company's income, it is necessary, therefore, to ascertain the consumption at each step in these rates. The company has furnished data for a period of 18 months, covering 1912 and six months of 1913, showing the amount of current billed at each step under the general and power rates. The data for the various classes affected by a 6 or 7-cent rate are as follows, the amount consumed being stated in kw. hrs. sold:

Rate (cents).	1912.	1913 (6 mos.)
	General Rate.	
10	77,091,373.2	41,932,758.8
9	18,842,886.5	10,088,064.6
8	10,345,376.5	6,043,083.4
7	7,223,097.6	4,179,018.5
6	10,135,883.4	6,055,715.0
5	29,466,034.6	19,729,768.8
Total	153,104,651.8	88,018,409.1

Power Rate.

9½	.....	15,775,843.0	7,419,709.5
8	.....	5,683,324.3	2 511,335.2
6	.....	6,828,891.8	2,811,828.6
5	.....	313,085.7	7,537.7
Total		28,601,144.8	12,750,411.0

From the data for these two periods, there may be calculated for 1912 and 1913 the greatest possible reduction in revenue that might have been caused by a 6 or 7 cent maximum current rate. Assuming that all current then billed at 10, 9 and 8 cents under the general schedule had been billed at 7 cents, and assuming that all current under the power schedule billed at 9½ and 8 cents had been billed at 6½ (7 cents less ½ cent for lamp renewals), the resultant decrease in revenue for 1912 would have been \$3,351,578. Upon the basis of a 6-cent maximum current charge, the decrease would have been greater — \$4,735,341.

In the first six months of 1913, the greatest possible decrease would have been \$1,780,436 under a 7-cent rate and \$2,516,235 under a 6-cent rate. As the total amount of current sold during the first half year was 51.8% under the general rate and 51.3% under the power rate of the sales for the whole year, the maximum deductions would have been about \$3,440,000 and \$4,862,000, respectively.

These amounts, however, are much more than the probable or necessary reductions for several reasons. In the first place, a large part of the current billed in the steps or blocks where the rate exceeds 6 or 7 cents is taken by customers who consume considerable current in the steps below 6 or 7 cents, and therefore pay an average price per kw. hr. less than either figure. The above calculation involves the assumption that the company will reduce the actual current charge to every customer under the general rate and power contracts, whereas the requirement of the Commission need go no further than to impose a maximum charge of 6 cents or 7 cents per kw. hr. The reduction would, therefore, have no application to consumers whose current costs them less than 6 cents or 7 cents per kw. hr. Under the present general rate schedule, customers using more than 2,000 kw. hrs. a month actually pay less

than 7 cents per kw. hr., although the company bills the first 250 kw. hrs. at 10 cents, the second block of 250 kw. hrs. at 9 cents, the third block of 250 kw. hrs., at 8 cents the fourth block of 250 kw. hrs. at 7 cents, the next block of 500 kw. hrs. at 6 cents and the balance at 5 cents. Every consumer who takes more than 4,000 kw. hrs. a month pays in effect a rate of less than 6 cents. Consequently, the company would not lose the full amounts previously calculated, for the lowering of the maximum current charge to either 6 or 7 cents does not compel the company to retain the present step at the present rates below the maximum fixed. It might be possible for the company to increase the rates in certain steps below 6 or 7 cents or readjust these rates according to consumption without increasing the bill for any amount of current over 2,000 kw. hrs. per month under a 7-cent rate, or 4,000 kw. hrs. under a 6-cent rate.

From the data furnished by the Company, it is possible to determine the amount of current sold to customers who pay less than 6 or 7 cents, and who should therefore, not be included at this point in figuring the amount which the Company would lose. Leaving this class of customers out of account, the probable reduction of revenue for the year 1913 would not have exceeded \$3,100,000 under a 7-cent or \$4,600,000 under a 6-cent current rate.

Even these figures are probably excessive. As already pointed out, the company has a larger number of contracts under which the landlords or their authorized agents are purchasing current and reselling it to tenants at higher rates or by combining the consumption of tenants are able to secure unusually low rates without adopting this merchandizing process. The parts of the schedule under which these practices have grown up have been declared by the Commission to be unjust, unreasonable and unduly discriminatory, and therefore, illegal. The equalization of rates and practices would probably eliminate these special contracts, which virtually constitute a method of rebating to the landlords, and would result in restoring the rates to a proper basis with a corresponding increase in the revenue of the company. It is impossible to estimate from the record the exact effect in revenue of the elimination of this discrimination, and it has not been deducted from the above figures, but it would be a considerable sum, and strengthens the conclusion that the above figures are certainly maximum figures.

Reduction in Rates Will Increase Sales.

There are still other factors of even greater importance to consider in determining the probable effect of a decrease in rates. In the first place, there is the normal increase in business from year to year. In the year ended June 30, 1906, the total number of kw. hrs. sold by the Edison Company was 155,680,976; in 1913, 540,028,777, an increase of nearly 400,000,000 kw. hrs. in seven and one-half years. The annual rate of growth since 1908 has been as follows:

	Total Sales.	Commercial and Muni- cipal Sales.
1909 over 1908.....	4.73	8.44
1910 over 1909.....	8.98	9.19
1911 over 1910.....	14.29	13.44
1912 over 1911.....	22.61	15.84
1913 over 1912.....	33.77	9.68

When the proceeding was reopened last fall at the request of the company, it brought forward the contention that its revenue from commercial sales was declining. In support of this view, data for the first ten months of 1914 were submitted on the total current generated by the Edison and United companies and on the Edison earnings from sales of current. These purported to show that the figures for September and October were lower in 1914 than in 1913. Information was also submitted as to revenue received from commercial business (municipal and high-tension sales excluded). This showed a decrease only in October. As the issues in this proceeding relate principally to the rates for commercial sales of low-tension current, the Commission called for the monthly figures for commercial sales of current and the revenue therefrom for each month for 1912, 1913 and 1914. The figures for the first eight months of 1914 show a greater increase as compared with 1913 than the corresponding period of 1913 as compared with 1912, and even in September and October, commercial sales in 1914 were larger than in 1913. The war undoubtedly had an effect, but it is certain that sales and revenue for the year 1914 taken as a whole are in excess of the figures for

1913. In any event the figures for one month cannot be made the basis for a forecast of 1915, particularly as the data for October are misleading owing to the fact that the figures for 1913 with which comparison is made, were exceptionally high.

On rehearing, the company introduced also data showing the increase in the efficiency of lamps to supplement and bring down to date similar information earlier placed on record, and claimed that improvements in lamps were affecting unfavorably the sales and earnings of the company. It is sufficient to point out that the company's earnings have shown a very great increase in recent years in spite of the fact that during the same period there has been remarkable progress in the efficiency of lamps. Further, the first eight months of 1914, showed a rate of increase greater than in 1913.

It would perhaps be unfair to assume that the total volume of sales for the next few years will increase as rapidly as in 1912 and 1913, the output in these years having increased for certain special reasons which may not apply to the future; but it is undoubtedly true that without any change in the rates, the total amount of current sold in 1915, and more particularly the business with private consumers and the city as distinguished from the business with street railways and electrical corporations, will considerably exceed the sales both for 1913 and for 1914, and that each year in the near future will show an increase.

Whatever may be the increase in 1915 and later years resulting from a normal growth of business under stationary rates, it is certain that a reduction of the maximum current charge from 10 to 6 or 7 cents per kw. hr. would stimulate the demand for current. It is a well known fact that a decrease in price increases sales. There may be exceptions to this rule, but they are comparatively few, and the electric industry is not one of them. Although none of the customers in the general and poorer classes using less than 250 kw. hrs. has enjoyed an appreciable rate reduction since 1905, the amount of current sold has grown steadily. If a 6 or 7-cent current charge is established, it will stimulate the use of electrical appliances in the household, stores and shops and will lead to the use of electric motors for many purposes where they are not now considered economical because of the high charge of current. Fur-

ther, those using even less than 15 or 20 kw. hrs. will be induced to increase their consumption because of the lower rates soon obtainable on passing the marginal line.

The company's experience with rate reductions confirms this view. Its most recent reduction became effective July 1, 1911. The company estimated that as a result of lowering its charge and of changing its schedule in other ways, its revenue would be reduced by over \$1,250,000 upon the basis of actual sales for the previous year. But the actual gross profits from sales of electricity show that such a loss was not realized. The figures for profits for the period 1910-13 are as follows:

1910.....	\$7,365,864
1911.....	7,524,141
1912.....	7,370,236
1913.....	7,802,732

Although the new rates went into effect July 1, 1911, their operation during the last six months of the year did not serve to reduce the profits for the whole year below the figures for 1910. The full effect of the reduction should appear in 1912, the first complete year under the new rates, but the profits for that year were only \$175,000 below those for 1911 and exceeded those for 1910; and in 1913 they were actually greater than in any prior year.

Profits under New Maximum Rate.

From the conclusions already reached, it follows that a revision of the maximum rate together with the adoption of a meter charge would not have reduced the company's revenue in 1913 more than \$2,100,000 under a 7-cent rate or \$3,600,000 under a 6-cent rate. These are outside figures, arrived at by disregarding many factors which would have made the probable reduction much smaller. They are, moreover, applicable only to 1913, for the growth of business in any subsequent year would partially offset the losses. Deducting the amounts just given from the profits in 1913 from the sale of current, less operating expenses, taxes, uncollectible bills, rentals for the use of underground conduits, and a liberal reserve for renewals, contingencies, etc., there would remain \$5,700,000 under a 7-cent and \$4,000,000 under a 6-cent maximum

current rate. The details may be shown in summarized form as follows:

Profits for 1913 Under Reduced Retail Rates.

	Assumed 7c Maximum	Assumed 6c Maximum
Actual profits for year.....	\$7,803,000	\$7,803,000
Maximum reduction in receipts from sales of current	3,100,000	4,600,000
Balance	4,703,000	3,203,000
Receipts from meter charge.....	1,000,000	1,000,000
Total profit	\$5,703,000	\$4,203,000

To appreciate the significance of these figures it must be borne in mind that the maximum amount upon which the New York Edison Company was entitled to a fair return at the close of 1913 was \$60,000,000. The capital actually invested in the electric property by the security holders of the Edison Company and its predecessors did not exceed \$45,000,000, and may have been as low as \$30,000,000.

Under a 7-cent maximum rate, profits of \$5,700,000 yield upon the basis of 1913 —

a. $9\frac{1}{2}$ per cent. on \$60,000,000, which is the amount upon which the company is entitled to a fair return, i. e., the fair value of the property.

b. $12\frac{1}{2}$ per cent. on over \$45,000,000, the maximum capital investment in the electric property of the company.

c. $7\frac{1}{2}$ per cent. on \$76,000,000, which is approximately the entire amount of securities and obligations outstanding in the hands of the public representing all the property of the New York Edison Company, i. e., not only the operative property but also other investments yielding annually over \$1,200,000. The total profits would insure a return of over 9 per cent. on all securities and obligations in the hands of the public.

d. 6 per cent. on \$95,000,000, or 50 per cent. more than the fair value of the Edison property used to supply electricity.

With a margin of \$35,000,000 between the fair value of the property and the amount upon which a 6 per cent. return would

be earned, there is no occasion for fearing any possible injustice to the company through any undervaluation of its property. Profits from operation to the amount of \$5,700,000 would enable the New York Edison Company not only to continue its dividend payments as heretofore but also to set aside annually a surplus of more than \$1,000,000.

Under a 6-cent maximum rate, profits of \$4,200,000 yield upon the basis of 1913.

- a. 7 per cent. on \$60,000,000, the fair value of the property.
- b. 6 per cent. on \$70,000,000.
- c. 9 per cent. on more than \$45,000,000, the maximum capital investment in the electric property of the company.

A return of $9\frac{1}{2}$ or 7 per cent. upon the total value of the property means a much higher rate of dividends to the stockholder under the usual method of dividing the capitalization between stock and bonds. If the fair value of \$60,000,000 were equally divided between bonds and stock, the bonds would undoubtedly be marketable on a 5 per cent. basis and the stock would earn 14 per cent. under a 7-cent maximum rate and 9 per cent. under a 6-cent maximum rate as shown by the following table:

Security	Amount	Income-un- der 7 cent maximum rate.	Per cent.	Income un- der 6 cent maximum rate.	Per cent.
Bonds	\$30,000,000	\$1,500,000	5%	\$1,500,000	5%
Stock	30,000,000	4,200,000	14%	2,700,000	9%
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	\$60,000,000	\$5,700,000	$9\frac{1}{2}\%$	\$4,200,000	7%

If the proportion of bonds were increased to 2-3, the stock would earn $18\frac{1}{2}$ per cent. under a 7-cent rate and 11 per cent. under a 6-cent rate.

It is important again to recall that these calculations are on the basis of 1913, whereas the new rates will not go into effect until the spring of 1915. In the meantime the company will have made large profits for over one year not covered by the record in this proceeding; and the increased business due to lower rates will have minimized the effect of the new schedule.

Conclusion.

If the only changes to be made in the schedule of rates were

the institution of a meter charge and the reduction of the maximum rate for current, the foregoing discussion and findings clearly indicate that the maximum current charge should be 6 cents per kw. hr. Such reduction, however, might necessitate revision and readjustment of other rates in order to establish a reasonable and properly balanced schedule, having at all points a more direct relation to the cost of service than the present schedule, where rates within each class vary according to the quantity of current consumed. The record does not contain, and the company has been unable to furnish, the data which the Commission should have in order to prepare a complete schedule of rates; and indeed it may be urged that the company should first be given an opportunity to prepare a new schedule. I am of the opinion, therefore, that in order to allow sufficient margin for all necessary readjustments and reductions of other rates, the maximum current charge should be fixed at 6½ cents per kw. hr. for electricity for lighting or for lighting or for general use. In arranging a new schedule of rates, the company may well give favorable consideration to a low rate for power in view of the long hour use of current by power customers and the relatively small seasonal fluctuations in their consumption. Moreover, the use of current for power involves no lamp renewals. As the company makes an allowance of one-half cent to customers supplying their own lamps, the maximum rate for power should in no event be higher than 6 cents.

MILO R. MALTBY.

February 1, 1915.

STADTLANDER vs. NEW YORK EDISON COMPANY	} No. 1395.
EWOLDT vs. NEW YORK EDISON COMPANY	

Maltbie, Commissioner.—The preceding Opinion was based upon the evidence of record when the hearing was closed a second

time upon December 4, 1914. Thereafter, the Merchants Association was heard upon its petition asking that the Commission make a full investigation of the property, financial affairs, investments, revenues, rates and charges of the Edison Company, that an appraisal and valuation be made, and that a full and complete scale of graduated charges be established by the Commission. The petition did not ask that the Merchants Association be allowed to intervene in these cases, but when counsel for the Association was heard upon his motion, he amended it to include intervention. This having been granted by divided vote, he proceeded in February to introduce testimony which covered about 250 pages. This evidence warrants no change in the conclusions and findings made in the preceding Opinion; rather it confirms them. I shall here confine myself to a brief discussion of certain phases and certain suggestions made in the Opinions of other members of the Commission, who are unwilling to recommend such a reduction in electric light rates as seems to me imperative, unless the company is to be allowed a higher rate of return than is justifiable.

Value of Property.

With reference to the necessity for an appraisal, counsel for the Merchants Association has cited a number of cases in which appraisals were ordered, but he has failed to produce a single decision which holds that an inventory and appraisal must be made before any revision of rates may be ordered. In any rate case, the value of the property used in behalf of the public is a very important consideration, but it is not necessary that the value be decided on the basis of opinions of engineers and experts rather than on the basis of the facts as revealed by the books and records relating to the property of the corporation. The Commission is agreed that relief in the pending cases shall not be withheld until an appraisal is made.

The basis for the finding of my Opinion that the present fair value of the operative electrical property of the Edison Company is not in excess of \$60,000,000, is not the report of the Legislative Committee of 1905. If it were, the value would be about \$3,000,000 less than the figure I have used. As a matter of fact, the basic information which is now a part of the record, consists of the sworn statements of the company with regard to property

acquired by the present corporation since its formation in 1901, the testimony given in this proceeding by the auditor for the Edison Electric Illuminating Company, by far the most important corporation absorbed in the present company and the books of which are still in existence and not lost or mislaid and the sworn returns of the officers of the minor companies merged in the present corporation.

Commissioner Williams seems very much impressed by the blanket entry of May 1, 1901, of "plant and property, \$78,000,000." It is established beyond any question that this figure covered not only the property acquired on May 1, 1901, of "plant and property," but also \$55,000,000 of "water" introduced in the process of making the New York Edison Company out of the subsidiary companies. If this amount is taken from the blanket entry of \$78,000,000, there remains a figure of only \$23,000,000 to represent the electrical property acquired on May 1, 1901, and about \$6,000,000 of securities. There is no ground for taking seriously the book figure of \$78,000,000, which is the basis for the figure of \$132,000,000 mentioned in Commissioner Williams' Opinion. If account is taken of all the facts in the record, it is clear that without deducting depreciation, there is no justification of any "book figure" for fixed capital in excess of \$75,000,000 and that even this figure includes some \$6,000,000 of securities of other companies.

Commissioner Williams refers to a valuation of \$49,000,000 for "the property of the Edison Electric Illuminating Company," said to have been made in an action in the Supreme Court of this state in 1901. In the first place, it should be noted that the record in that action is not in evidence here, and under the ruling of the Appellate Division of the Supreme Court in *People ex rel. Joline vs. Willcox*, 134 App. Div. 563, we have no right to base a decision upon facts not in the record. In the second place, the valuation referred to was based on past and anticipated earnings of the company. It was an appraisal of certain minority stock and not of the electric property used to serve the public. The case had nothing to do with the unreasonableness of any rates and indicated rather that, if the earnings justified a value of \$49,000,000, the rates should have been reduced. Further, it has been decided repeatedly by the courts that any valuation based upon

earnings is not proper evidence in a rate case when the reasonableness of the earnings and of the rates, is under attack. (See, for example, *Cotting vs. Kansas City Stock-Yard Co.*, 82 Fed. Rep. 850, 854.)

Earnings.

Commissioner Williams states that "on account of the general conditions existing in business, the earnings have undoubtedly fallen off somewhat in 1914" and apparently accepts the claim of the company of a loss of \$650,000 as well founded. This information is not in the record, but if part of the company's results for 1914 are to be considered, all should be. The company's annual report shows an actual increase of more than \$525,000 in operating revenue. The largest increases in operating expenses are in the cost of current and in the amount set aside for renewals and contingencies, which was \$285,000 more in 1914 than in 1913. This increase is certainly not justified, and Commissioner Williams admits that "in view of the substantial fund already reserved for contingencies * * * the amount set aside for renewals and contingencies each year should be reduced." Any considerable reduction in the annual allowance would mean a material increase in the earnings available for return on the investment in the form of interest or dividends.

The increase in the cost of current is due entirely to the fact that the Edison Company purchased a large part of its current from the new plant of the United Electric Light & Power Company at a figure which is much higher than the cost of generating current at its own stations. The generating cost in the Edison plants per kw. hr. was less in 1914 than in 1913, and the facilities for generating current were largely increased during the year. There can, therefore, be little doubt that all the current needed could have been generated in 1914 at the same cost or at a less cost than 1913.

The nub of the situation is in the net earnings for the two electrical companies, as both are owned by the Consolidated Gas Company. The profits of the two companies before setting aside the reserve for renewals and contingencies were nearly \$350,000 greater in 1914 than in 1913, and after deducting excessive amounts for renewals and contingencies, the profits were approximately \$8,500,000, which were more than in 1913.

The fundamental difference between Commissioner Williams and myself is that his plan will involve a cut in the net earnings of the company of only \$1,800,000 or \$1,900,000. I believe that the rates should be reduced to the extent of from \$2,800,000 to \$3,000,000. In other words, Commissioner Williams believes in allowing the company net profits of about \$1,000,000 more than I do. If a total cut of \$3,000,000 were made, the company would still have net earnings of \$4,800,000 which is 7% upon nearly \$70,000,000, whereas the record does not warrant a finding of the value of the property in excess of \$60,000,000. If one were to adopt the rate accepted by the United States Supreme Court in the Consolidated Gas case, viz., 6% the company would have a return upon \$80 000,000 or \$20,000,000 in excess of the fair value. It is unjust to the consumers to limit the reduction in the company's revenue to \$1,800,000, for according to the Court of Appeals, a public service corporation is entitled to a fair return and no more. Justice Miller writing the opinion in *People ex rel. Kings County Lighting Co. vs. Willcox*, 210 N. Y. 479, said:

“ * * * the public is entitled to be served at reasonable rates and the corporation is entitled to a fair return on the property used by it in the public service, no more, no less, always assuming, of course, that the return is computed on a proper valuation. That was not made so by statute, but was the rule at common law, which justifies legislatures and commissions in fixing rates.”

Landlord and Tenant Contracts.

It should be pointed out further that the adoption of an 8-cent maximum without any meter charge fails to reach the problems of discrimination under the landlord and tenant contracts. The effect would be to reduce somewhat the profit of the landlords and to prevent the landlords of small buildings from reaping any profit, but the large landlords would still make a profit. The expedient suggested, namely, that the landlord be required to provide his own meters and that the Edison Company be prohibited from providing more than one meter, is highly unsatisfactory. It will give the tenant no redress in case he complains about the accuracy of a meter. Under present conditions, the meters belong to the Edison Company and are subject to the supervision of the Public Service Commission. If the service is unsatisfactory, the tenant

may appeal to the Commission. But the landlords will be beyond the pale of regulation, and the Commission will be powerless to aid the tenants. Further, the limitation of one meter per consumer will fall harshly upon many who wish separate meters to register consumption on separate circuits or for distinct uses. If a consumer wants several meters, he ought to be allowed to have them, provided he pays accordingly. This he would be required to do if a schedule of meter charges were established.

Meter Charge.

The refusal of the Commission to adopt a meter, consumer or minimum charge is directly contrary to the evidence. The record shows clearly that there are certain costs which have no direct relation to the amount of current consumed. They are nearly the same whether the consumption is small or large. Not only are these facts recognized by many companies, but most of the recent decisions of State Commissions in electric rate cases have approved or required the establishment of a meter, consumer or minimum charge. (See, for example, *In re Minimum Monthly Charge for Lighting Service*, 1 N. J. Pub. Utilities Com. Rep. 235; *Pillsbury vs. People's Gas Light Co.*, 4 N. H. P. S. C. Rep. 337; *Weaver vs. Kirksville Light, Power & Ice Co.*, 1 Mo. P. S. C. Rep. 149; *City of Ripon vs. Ripon Light & Water Co.*, 5 Wis. R. C. Rep. 41; *Bucyrus Electric Case*, decided by Ohio Public Utilities Commission, October 15, 1914.) The Public Service Commission for the Second District has followed the same course (cf. *Fuhrman vs. Buffalo General Electric Co.*, 3 P. S. C. R. [2d Dist. N. Y.], 739, 791-2, 796).

If a meter charge is not to be adopted, the factor ought to be embodied in a schedule of rates in some other way. But to disregard the fact of fixed expenses in framing a schedule of rates and to say that all persons consuming less than 500 or 1,000 kw. hrs. monthly must pay the same rate — 8 cents per kw. hr. — is illogical, contrary to the evidence, and will continue certain unjust discriminations which are now part of the rate schedule of the New York Edison Company.

Further, the adoption of an 8-cent maximum rate for both light and power is illogical and in no way justified. The record shows that the cost of free lamp renewals is approximately one-half cent

per kw. hr. This is an expense which is not incurred in connection with the power business. The company recognizes this in its rate schedule, and accordingly makes the maximum rate for power one-half cent less than the rate for lighting, and makes still further concession to power customers using more than 200 kw. hrs. The power business is to a great extent business off the peak, and far less subject to seasonal fluctuation than lighting. There is, therefore, no justification for making the same maximum rate apply to power as well as to lighting.

However, if a reduction of the maximum rate to 8 cents is considered justifiable, there is still no ground for refusing to reduce the charge for current to 7 or $6\frac{1}{2}$ cents to the great mass of consumers and to install a meter charge of 50 cents, 75 cents or \$1.00 per month. A flat rate of 8 cents up to 1,000 kw. hrs. per month will deprive a large number of consumers of any reduction commensurate with that given to the very small consumers. Yet consumers using from 25 to 2,000 kw. hrs. per month are the very ones who are now paying much more than they should. With the 8-cent maximum, there should go a rate for current alone of 7 or $6\frac{1}{2}$ cents per kw. hr. Such a schedule would mean lower rates to 99 per cent. of the consumers, would eliminate the worst forms of discrimination, would more equitably distribute the reduction in rates, and still allow a generous return upon the fair value of the property.

MILO R. MALTBIE,

March 10, 1915.

Commissioner.

JUNE 28, 1916.

Meeting was called to order at 11 o'clock, Senator Thompson presiding.

Mr. WALTER G. OAKMAN, having been sworn, was called as a witness and testified as follows:

By Mr. Moss:

Q. Mr. Oakman, I will ask you a question or two. When you left us yesterday it was, as I understood it, with the understanding that you would confer with counsel relative to allowing the Committee entrance to papers of Andrew Freedman, deceased,

without being able to point out any particular papers that we needed. Have you conferred with the counsel and are you able to state your position this morning? A. I have conferred with counsel and I have decided not to accord any such permission.

Q. Do you mind stating what counsel you conferred with? A. Stetson, Jennings & Russell.

Q. Are you aware that Mr. Stetson, of Stetson, Jennings & Russell, has been counsel for the Interborough Company and have been paid large fees by them? A. No. They simply happened to be counsel for the executors of his estate.

Q. And they are also counsel for J. P. Morgan & Company? A. I don't know anything about that.

Q. Well, I make that statement and I guess there is no contradiction of it, Mr. Quackenbush.

Mr. Quackenbush.— They are not counsel for the Interborough. They were counsel for the bankers of J. P. Morgan, leading up to subway contracts, and were paid by the Interborough. They are not our counsel in any other way and never have been.

Q. They had a very important relation to the dual subway contracts. It was upon their opinion that Mr. Morgan loaned the money.

Mr. Quackenbush.— Yes, sir.

A. But, Mr. Moss, it is hardly fair to infer from the fact of their connection with the Interborough Company that their advice would have anything to do with it.

Q. Mr. Oakman, it is not for me to infer anything, but it is up to me to get all the facts relating to these things. The reason why we have desired to look into the papers of Mr. Freedman is that he had a very close relation to all of these matters, as has appeared upon the testimony, and that he had a very close relation to strong political powers in this city, Mr. Croker for instance; that Mr. Freedman is well supposed to have received stock sometimes partly in the interests of persons who were not named, and that such an inspection of the books as we have had, short and temporary — I mean an incomplete inspection of them — indicated that he had handled large sums of money through checks to bearer, which had been cashed, aggregating many thousands of

dollars, along about the time when important steps were taken in these subway transactions. Believing that Mr. Freedman had relations to the interests that we are required to inquire into by the orders constituting this Committee, that is the reason why we have wanted to look as well as we could into the Freedman papers. I am willing to concede, as a matter of law, that our rights, our strict legal right to take Mr. Freedman's papers and go over them merely like a fishing expedition, are questionable. We might, in order to have a strict legal right to inspection, have to specify particular papers, and owing to the nature of the case, that can't be done. I don't know there is anything more to be said, Mr. Oakman. In regard to the papers that Senator Thompson asked you about yesterday. You have not, by reflection, recalled any such papers? A. No; I know I haven't them.

Q. Before Mr. Shuster takes that matter up, I have a note here for Mr. Eastman. Mr. Eastman, you say you wanted some questions asked of Mr. Belmont; does it relate to the inquiry? A. It has relation to the inquiry that Senator Thompson was going to make as to Ward & Gow's right to exclude The Masses from the subway news-stands. I would like to ask you, Mr. Belmont, if I may, whether your company, rather whether the Interborough Company, has any share in the firm of Ward & Gow, whether your company is financially connected with them.

Mr. Belmont.—Has a financial interest in Ward & Gow's concern? Not that I know of.

By Mr. Eastman:

Q. Does the Interborough Company receive any commissions on the sales that Ward & Gow receive in the subway? A. No; and the contract is a perfectly clear contract. I can't recall its terms exactly.

Mr. Moss.—Mr. Belmont, does the contract express all the financial relations between the Interborough and Ward & Gow? A. Yes.

By Mr. Eastman:

Q. Is there anything in that contract, Mr. Belmont, which allowed them to exercise a censorship as to what magazines they would sell on the subway? A. I don't recall.

Q. Would you mind giving me your personal opinion as to whether you think they have a right to exclude magazines from the subway stands because they don't like them? A. I won't express an opinion as to that, a personal opinion.

Q. Mr. Belmont, is Ward & Gow's function there a public service; in your opinion? A. They conduct news-stands under the same privileges as any news-stands, I presume.

Q. Well, is the function of any news-stand — do you mean to say “no” to my question, or “yes”? A. I don't quite understand the purport of it. A public service — they are news-stands. They conduct a news-stand like any other news-stand. I don't know what you mean. Do you mean that they have a moral obligation to the public? Is that what you mean?

Q. I am more interested in their legal obligations than I am in their moral obligations, and I believe if they are of public service, they have some legal obligations that they have not if they are not of public service. A. I can't help you on that.

Q. Mr. Belmont, the Interborough Company is of public service, isn't it? A. Yes.

Q. Well, doesn't the relation between the Interborough Company and Ward & Gow entail the conclusion that they also are a public service? A. I could not express anything but an opinion on that subject.

Q. That is exactly what I want you to express. It would help a lot if you would express an opinion. A. Why?

Q. Because your opinion is very important. A. I don't see that it is. My private opinion does not seem to be pertinent here on a question of that kind. You are asking me about the actual relations between the two, Ward & Gow Company, and so far as the Ward & Gow Company is involved as a public service as to its contract with the Interborough, I can't give you an opinion.

Q. May I ask you if you have an opinion about it? A. As to whether an objectionable publication should be sold there or not?

Q. Yes. A. Yes; I think if there was any legal method of preventing an objectionable publication from being sold on a stand, it ought to be done.

Q. Will you tell me whether you have an opinion as to whether Ward & Gow is a public service? A. I can't give you that either. It would be worthless.

Senator Thompson.—Of course, the difference between the use of the word “legal” and “proper” is apparent. They are also necessarily interested in what is proper, to mean legal or illegal. Now, with that explanation, from what I have heard of this Ward & Gow matter, I think that whatever Ward & Gow have done has been legal up to date.

Mr. Eastman.—Don't you think, Senator Thompson, that Mr. Belmont's opinion would be pertinent to the question of whether a law would be proper or not? A. I should think so; very much so. By Mr. Eastman:

Q. Won't you give us your opinion, Mr. Belmont? A. I don't think I want to give my opinion on a subject like that. You would have to make that a very specific question.

Senator Thompson.—I think what Mr. Eastman had in mind was this: For instance, a public service is carrying the public on a car or furnishing gas to the public, or electric light to the public, or performing a service for the public. That is what he means by a public service. For instance, the Interborough Company is engaged in a public service. Now he wants to know if, in your opinion, the sale of these magazines on the news-stands of the Interborough is a public service; that is to say, service that they are bound to give to the public; it is in the nature of a monopoly. And he also wants an opinion as to whether or not — now being under the jurisdiction of the public service — it should be.

Mr. Belmont.—It is.

Mr. Moss.—I think we had better dispose of the unfinished matter with Mr. Belmont. You have arranged so that I have a copy of the matters on appeal and I read from page 371 what I think you had in mind. A question was asked of you: “Q. You have here, I think, your counsel tells me, the distribution that you made to other persons of some of this \$1,500,000 of stock. Can I have that?” Mr. Anable then speaks and says: “Mr. Belmont will correct me if this is not so. I understand that the 15,000 shares were distributed by August Belmont & Co., as follows: 10,000 shares to Mr. August Belmont, 1,000 shares to Mr. McDonald, the remaining 4,000 shares were retained by the firm

as a firm asset, less a few shares that were distributed to different employees of the firm to reward them in accordance with their respective interests. What was done ultimately with the balance of the 4,000 shares as a firm asset, I do not know." That is what you referred to and that is what you have stood upon in the examination? A. Yes.

By Mr. Moss:

Q. And you don't now remember what was done with those 4,000 shares? A. You mean that the firm had?

Q. Yes. A. It was distributed according to our firm arrangement.

Q. In stock? A. Yes.

Q. Did Richard Croker get any of that stock? A. No; nobody outside of the firm.

Q. Did Mr. Croker get any stock in any company connected with the subways or the organization thereof? A. I don't know; I think so, but if he did, whatever interest he had probably came through Mr. Freedman.

Q. You mean to say whatever was given to Mr. Croker went into the name of Mr. Freedman? A. I presume so. Mr. Freedman, largely, had charge of Mr. Croker's affairs. I mean business connections.

Q. Now, there was read into the record in that case, a letter written by you to Mrs. L. C. Langford, which I find on page 446 as follows:

"Mrs. L. C. Langford, 147 Williw Street, Brooklyn, N. Y.:

"Dear Madam.—On my return from the south I received your letter of February 20th, accompanied by a statement. Your letter requires really no reply, but I feel it due to myself that the vulgar error into which you have fallen should be met with the facts.

"August Belmont & Company are and always have been the fiscal agents of the Interborough interests. It was necessary to find an existing railroad company through whose charter the Interborough Rapid Transit Company could be organized, and the road when constructed, operated by lease from the Rapid Transit Subway Construction Company, in

view of the fact that at the outset of the work of building the subways the required legislation could not be had for securing a charter for a railroad company to operate the subway lines.

"August Belmont & Co. found and bought the Pelham Park and City Island Railroads as the only roads available having a suitable charter for a railroad company, and which could be bought.

"It was understood by the board of directors at the time, that the property was to be ultimately turned over to the Interborough Rapid Transit Company at cost.

"All the members of the board of directors, including your friend, the late General James Jourdan, advocated and approved this transaction, which was a legitimate one in every particular and not an excessive compensation for the great work accomplished.

"So far as your reference to the monoroad is concerned, I make no comment excepting to say that it is wholly and unjustifiably inaccurate.

"I remain, yours truly,

"AUGUST BELMONT."

Then there was another clause which Mr. Hodge had not read and which reads as follows:

"The enabling legislation, at first unobtainable, was finally secured, and the Pelham Park and City Island railroads were then turned over at cost. Their value and the value of my firm and my own services in organizing and building the subway formed together the basis of an issue of \$1,500,000 of the Interborough Rapid Transit Company's stock, there having been no provision made in the beginning of the enterprise for compensation."

Now in that letter, Mr. Belmont, it is stated that the property was to be ultimately turned over to the Interborough Rapid Transit Company at cost, but the record upon the books of the company shows that it was turned over to the company at a million five hundred thousand dollars, and that is where you came into the matter, Mr. Shuster.

Mr. Shuster.—Mr. Belmont, you organized the Subway Construction Company or what is known as the Rapid Transit Subway Construction Company, and you also organized the Interborough Rapid Transit Company. The Construction Company was organized for purposes of taking over the McDonald contracts, constructing the original existing subway. Is not that a fact? A. Yes, but I explained to you it did not take an assignment; it was organized to perform the contract which McDonald had signed. It did not take an assignment of the contract for the reasons that I explained.

Q. Now, at the organization of the Interborough Rapid Transit Company, that corporation acquired all of the outstanding capital stock of the Construction Company? A. Yes.

Q. Amounting to six millions of dollars, par value. That stock was paid for by an exchange of the stock of the Interborough Rapid Transit Company on a basis of 160. A. Yes.

Q. Can you tell or do you recall what was the market value of any of the Construction Company's stock at that date, May 14, 1902? A. I could not tell you; if there were any sales of it they were absolutely private. There was no public market.

Q. Well, in arriving at that price as a basis of exchange of these securities, how was that determined? What was the method pursued by the directors of the Interborough Rapid Transit Company to assert that value? A. Well, at that time there was no reason to believe that the construction company note would be carried out for the face of the sub-contracts represented a cost of only somewhere in the neighborhood of twenty-six millions, if I remember rightly. That is those were the sub-contracts that were signed, and nobody could tell whether that might not be the real outcome; if that was the fact, there was then a large profit, a profit of millions of dollars, because the contract was for thirty-five million. As I told you, the contract exceeded that very largely.

Q. You mean by that that the stock value at the time of transfer to the Interborough as it subsequently developed was not worth 160? A. It was worth a great deal more. The construction feature appeared at that time to represent a profit of eight million, and the contract carried with it the right to operate, and

you know what that is now, so that the exchange was a very fair one. As a matter of fact, and what the company got, was this construction of all that belonged to it.

Q. Were the stocks of the Subway Construction Company widely scattered? A. No.

Q. They were held in the hands of a few? A. Yes.

Q. And the stockholders of the Construction Company were in the main the same stockholders and incorporators with the Interborough Rapid Transit Company, were they not? A. They became so by exchange. They exchanged their Construction Company stock for the Interborough Rapid Transit; that is the way they became stockholders. Through that exchange on the basis of 160.

Q. It is a fact that this stock was only partly paid at the time of the transfer to the Interborough? A. Yes, at 40 per cent.

Q. It was sold for exchange, subject to a payment of 40 per cent of its par value? A. Yes.

Q. And that 40 per cent on the six million was subsequently paid to the Construction Company by the Interborough Rapid Transit. A. I don't recall that. I believe that was so as to make it fully paid.

Q. That is what the records show, so that so far as the stock transaction was concerned that stock has cost the Interborough Rapid Transit Company the 160 per share at the time of its acquisition and 40 per cent of the par in addition in cash? A. That is what it represented.

Q. Do you know what stock is worth to-day — the Subway Construction Company stock? A. No, I could not say.

Q. It is not on the market at all. A. It is used by the Interborough now in its bids for construction.

Q. That stock control is in the hands of the Interborough, the operating and lease rights of the subway system. A. No, that was assigned to the Interborough. The Interborough Rapid Transit has that.

Q. So that the Interborough Rapid Transit Company owned by an assignment the lease rights? A. That was not assigned until a great many years afterwards, because it was still carried in the name of John B. McDonald. I can't recall the date.

Q. Now, the other day, Mr. Belmont, — A. He retained the contracts until the actual assignment of the lease was made, which was long after the work was finished, and then of the lease afterwards.

Q. Did not McDonald assign whatever interest he had in that lease at the time of the organization of the Interborough? What was it that McDonald turned over or surrendered to the Interborough Company for which he received two million five hundred dollars par value of the stock of the Interborough Company, and which on the books of the company is described as the remaining one for the interest in the subway lease? A. Well, McDonald had an interest at the outset. He was to receive 25 per cent.

Q. He was to receive 25 per cent of what? The profits? Or 25 per cent interest? A. Of the interest.

Q. In the leasehold itself? A. Yes.

Q. Well, now, did not he on the 4th day of May, 1902, the time of the transfer of the capital stock of the Subway Construction Company, assign to the Interborough Company that one-fourth interest in the leasehold right? A. I don't understand. The agreement which was made with him was made — was it in 1902?

Q. Apparently, from the books. A. Those were the terms made at that time.

Mr. Quackenbush.— Mr. Shuster, I see that this is not clear in Mr. Belmont's mind. I will be glad to give you dates with regard to these exact transactions, because I handled them myself.

Mr. Shuster.— You mean the date of the actual transactions. Well, it might be useful if you can give us a brief abstract of that.

Mr. Belmont.— It is too long ago, I can't give the exact date.

Mr. Shuster.— Mr. Mason tells me that the abstract that you speak of is among the exhibits. The abstract that you speak of is one that details a history of transactions subsequent to May 13, 1902. Now, what took place on May 2, 1902, when Mr. McDonald received the two million five hundred thousand of par value Interborough stock? What did he part with for that? A.

Well, he parted with his interest in the operating feature of the contract.

Q. The operating feature is covered by lease. A. What do you mean; there is no lease. The contract that he made with the city was to build the subway and operate it.

Q. Yes, but it was in effect a lease. A. Yes, and that part of the contract had a value.

Q. And that is what he transferred at the inception of the Interborough? A. Yes.

Q. And later on, when he assigned — by due assignment the contract or any portion of the contract in which he had an interest, was he again compensated for that? A. No, not that I know of.

Q. The other day when you were here you referred to some transactions on the books of the company, the Subway Construction Company, as having been in error as to the Pelham Park and City Island Railroad transaction. We find in the journal entries of May 14, 1902, this item, "Pelham Park and City Island Railroad bought from August Belmont & Co. one million five hundred thousand dollars." A. Well, whatever way they put that in their books they did that probably under the advice of counsel, and I don't know what bearing that has upon the question, but the facts, nevertheless, so far as our understanding, that is August Belmont & Co., that they were turning that over, and for turning over the entire undertaking as they were carrying it all in their own name, that was their compensation.

Q. Your position now is that August Belmont & Co. were simply acting as the agents to get that stock for the Interborough? A. We were acting as a syndicate. These interests were represented by participation certificates, not stock.

Q. The setting up on the books of the purchase price of the Pelham Park and City Island Railroad Company at a million and five hundred thousand dollars was inaccurate? A. Technically, it turned out to be.

Q. What do you mean by that? A. I mean by that, that that was not the only consideration.

Q. Well, this item was set up on the books of the company with some source of authority, was it not? A. I presume so.

Q. And do you know by whose authority? A. I do not. You will have to ask the Comptroller as to that.

Q. You were not the auditor at that time, Mr. Gaynor?

Mr. Gaynor.—No.

Q. That is your present version of the consideration for the million five hundred thousand dollars, is it not?

Mr. Belmont.—Really, I must refer you to this suit, and I can't recall these details with sufficient accuracy to answer these questions, and inasmuch as they are all of record there, when this suit was being prosecuted, I had the opportunity of refreshing my memory, but I am not carrying these matters in my mind from day to day; I have other things to think of.

Q. Did August Belmont receive any profit upon the turning over of the Pelham Park and City Island Railroad Company to the Interborough Company? A. It is all one transaction, and it does not represent that at all. The amount that was paid was stated. The real intention was simply the reimbursements.

Mr. Moss.—It was right in connection with that, Mr. Belmont, that you were asked on page 456, "Q. You have been receiving \$50,000 a year for these services from the Interborough? A. As a salaried officer—quite a separate matter. Q. And you received \$50,000 before that during all this time, from the Rapid Transit Subway Construction Company? A. Quite so—for my technical work. Q. And \$25,000 for the fiscal agency of your firm? A. I might have been Robinson and received it. Q. Did you consider that when you put in your services? A. I didn't consider that.

"Q. I want to have your testimony consistent if I can. I believe that you have testified before just the opposite of what you have testified now, and that you have testified that no services after the organization of the Interborough Rapid Transit Company were included in the services for which you were compensated by the issue of \$1,500,000 of stock?"

That question was objected to and the objection was withdrawn, but witness answered, "I never said it. If I did it was a misunderstood question."

Now this million and a half represented, so far as the railroad company was concerned, about \$240,000, wasn't it?

Mr. Shuster.— Two hundred seventy odd thousand.

Mr. Moss.— \$270,000, the price of the railroad, and the price of the services, but the question here referred to the various salaries you were receiving, the compensation that you were receiving, salaries for the extra money that you were receiving. A. I was conducting every detail of the affairs of the company.

Mr. Moss.— The other day when you spoke of that you spoke of that. You said you signed all their checks and that is the only service that the record showed that you rendered. A. I meant I went as far,— every detail of the work in progress was under my direct supervision, and I gave up my entire time to it and received a salary. That was a different thing. It had nothing to do in general with large services which included everything I stated to you the other day.

Mr. Shuster.— Mr. Belmont, your partnership did not render any itemized statement of its claim for this million five hundred thousand dollars to the Interborough Company at any time, did it? A. No.

Q. Did you carry on the books of your firm items of the service? A. No.

Q. Were there any writings establishing the syndicate of which you were the syndicate manager? A. Yes, the syndicate agreement was a signed document from the very outset.

Q. It was in that agreement that you were appointed manager, and as you stated you were given practically carte blanche as to the methods in regard to the Pelham Park and City Island. A. It did not mention any particular railroad.

Q. This syndicate was for the purpose of organizing and operating the company to take over the subway contracts. A. The syndicate was for the purpose of constructing the subway and providing ultimately for the organization of a company which would operate it.

Q. How long prior to the organization of the Interborough was that syndicate entered into? A. I don't recall at all as to the matter of dates.

Mr. Quackenbush.—Mr. Shuster, Mr. Belmont has an engagement at 12.30. It is now 12.20.

Mr. Belmont.—I asked Mr. Moss particularly that I should be examined early and relieved to-day at 12.30. Of course I have no direct communication with you, but I supposed—I was here at 11 o'clock.

Senator Thompson.—I am very sorry I was detained.

Mr. Quackenbush.—Mr. Belmont has an important meeting at 12.30 and he can be excused now.

Senator Thompson.—Could you come back this afternoon or late this evening?

Mr. Belmont.—You see this line of examination means that I would have to answer promptly in connection with things that happened fifteen years ago and I can't answer that.

Mr. Moss.—There are matters that I want to examine you particularly on, that did not occur fifteen years ago, but have to do with the negotiations of the dual subway contracts and those are very important, and this examination would not be complete without getting this information. I want to take up with Mr. Belmont the negotiations of the dual contracts, the attitude of the Board, what they did and how things were.

Senator Thompson.—I think we understand that City Island matter. I don't think there is any need of going farther into that. Mr. Moss now simply wants to examine you on what you know about these dual subway contracts, and if you could come this afternoon we would like it; if you can't——

I apologize for my delay. I attempted to communicate with Albany and I did not get down here on time.

Mr. Belmont.—I will, if you insist upon my coming to-morrow; you can well understand that I have important matters to attend to.

Mr. Moss.—We will take an evening session with you, Mr. Belmont.

Mr. Belmont.—I can't see that the questions which refer to the organization of the Interborough and the beginning of all this, and the construction of the subway and even this City Island matter—they are all a matter of record and I can't see what light I can throw upon it.

Mr. Shuster.—I don't wish to ask any more questions on that.

Mr. Belmont.—You asked me to speak from memory matters that I can't answer correctly in that way.

Mr. Moss.—The question is whether it will be this afternoon or to-morrow morning on the main issues, or to-night.

Senator Thompson.—I want to put in the record as an exhibit the Interborough's and the directors of the Interborough—an exhibit, History of the Libel Suit of Clarence H. Venner against August Belmont, and statement, in reference thereto, dated June 18, 1913, by T. P. Shonts, president of the Interborough Rapid Transit Company.

Mr. Shuster.—I would suggest at this point that all of the testimony taken before the sub-committee in reference to the Interborough Rapid Transit Company's transactions, together with the exhibits, be introduced into the record at this point, and then I will dictate later to the stenographer in detail what those exhibits are.

Mr. Moss.—We want you to fix the time and we will adjust ourselves to it.

Mr. Belmont.—Can't you make it short? Don't you think it would be better when you get here to telephone for me, than to have me wait for you?

Senator Thompson.—I will do that.

Mr. Moss.—Mr. Chairman, this is Mr. Max Eastman, who has a matter of importance to bring before this Committee.

Mr. Eastman.—Senator Thompson, I want to make a complaint against the firm of Ward & Gow for excluding my magazines from the subway stands. May I ask you if there is a representative of the firm here?

Senator Thompson.—Mr. Ward was subpoenaed to be here, and he called me up through his lawyer this morning and said he was very busy and he did not want to come. He said he supposed he had covered the situation when he was here the other day. I told him that as far as the Committee was concerned, we had asked him all the questions that we desired to ask, but I asked him to come here because I thought some people were coming here who might want to criticize his company for removing their magazine from subway stands. So the arrangement is that Mr. Bisbee, one of the attorneys of Mr. Ward, is here, and at any time Mr. Ward may be needed here his attorney will call him on the telephone.

Mr. Eastman.—I am glad that there is somebody here to represent him, because I want to say that in making this complaint I don't wish to impugn in any way the motive of Ward & Gow. My reason for thinking this is that I know it cost him a good deal of money to exclude our magazine from the subway stands, but I suppose that he is bothered a good deal by certain special interests who would like to consign our magazine to hell. However, I have no reason to identify Mr. Ward's motives with theirs. I think it is his judgment, and not his motives, which are unenlightened, and in presenting this complaint I am as much moved by enlightening the motives of that firm as I am in the hope of getting any redress through that firm.

Mr. Moss.—The Guaranty Trust Company and Jacques S. Cohen were called and did not respond.

Mr. Eastman.—Senator Thompson, I have been told by one of the most eminent lawyers in New York that Mr. Ward has no legal right to refuse to sell me space on those news-stands so long as I do not publish anything that is unlawful, but I was told in the same breath that in order to prove this I would have to have money enough to carry through an extended proceeding.

Senator Thompson.—My position was that his position was legal, as based upon the law and the decisions of the courts up to date. Of course what some courts might decide on a matter that has not been adjudicated, no lawyer can prophesy.

Mr. Eastman.—I am not competent to discuss that, but I understand that Mr. Ward said before your Committee that he never did exclude any magazine except on the grounds of decency and religion. I suppose that Mr. Ward will have to say that our magazine is either indecent or blasphemy, and I would like to ask Mr. Ward, through his representative, not as a point of law, but just as a matter of ordinary propriety of conduct, whether it would not be a proper proceeding for the people who claimed to him that our magazine is a criminal publication, to go to the district attorney about it. This seems to be the answer that is made to those interests which claim that our magazine is indecent, by certain respectable institutions. It is on the reading tables of the New York Public Library, Barnard College, etc., and it is a very strange thing how many perfectly respectable people in this community seem to want to pay a dollar for this monthly installment of blasphemy and indecency. I might remark that John D. Rockefeller has personally subscribed to *The Masses*, although I try to make it just as unpleasant reading for him as I possibly can.

Senator Thompson.—It costs a dollar a month?

Mr. Eastman.—It costs a dollar a year.

Whatever may be the law, I want to present from the standpoint of very ordinary justice how outrageous this "Russian censorship" that Mr. Ward operates is. Let us suppose that *The Masses* is an ordinary business and that I am making a small living out of it. I obviously can't make a very large living out of it, because it is too good, too artistic for that. I sell between one thousand and two thousand copies on the subway (or I did), and that nets me an income of \$70 to \$140 a month. Besides that it gives me an excellent advertising for my magazine, to have it on those stands, and it brings my published advertisements before about three or four thousand readers, and lets the advertisers know that I am operating a live magazine, which is on the newsstand. I suppose that is worth another \$100 a month. Mr. Ward deprives me of an income of \$300 a month, approximately, by this tyrannical action of his. In other words, he drives me out of business; assuming I am in this thing as a business, he drives

me out of business on the ground that I am publishing blasphemy and indecency, although neither he nor anybody else has ever had or will have the audacity to make that complaint to the proper authority, the district attorney. But, as a matter of fact, the injustice is a good deal more serious than that, because I am not in this thing as a business man and *The Masses* is not an ordinary business. I do not derive any income or salary from this magazine, and neither does any contributing editor or any editor of the magazine derive any income or salary from it. We are in it because we have an ideal of what an illustrated monthly magazine ought to be, and we want to give one to America. *The Masses* has never paid a cent for any article or story or poem or picture that has appeared between its covers, and yet it is edited and contributed to by men and women who receive high prices for their stuff from all popular magazines. A glance at our list of contributors will show you how many of the people who furnish the regular decorations for Mr. Ward's news-stands also furnish blasphemy and indecency for *The Masses*. Among the artists are Arthur Young, George Bellows, John Sloan, Maurice Becker, Robert Miner, Boardman Robinson, Arthur B. Davis. Here is a brief list of the writers: John Reed, James Hopper, Mary Heaton Vorse, Inez Gilmore, Finley Dunn, Lincoln Steffens, Charles Hanson Towne, Prof. Charles Beard of Columbia, Leroy Scott, Robert R. Sherwood, James Oppenheim, John Massey, Howard Brubaker, Floyd Dell, Edgar Lee Masters and Ernest Poole.

Now you might ask, Senator Thompson, why it is that all these men and women, who can get good money for their writings and drawings out of the popular magazines, give some of the best things they have to *The Masses*. I want to tell you why it is. It is because they have a religion. Their religion, I admit, is a little different from the religion of those people who complain about our magazine being on the subway stands. The chief purpose of their religion is not to make sure of the welfare of their souls in the hereafter, on Sunday, and then spend the rest of the week trying to grab off as much money as they can in the present world. The purpose of their religion is to try to make the people in this present world as free and as happy as they can be; that is

what they are trying to do, and because they find that they cannot do that as they want to in the ordinary magazines, whose only motive is to make money, they come around to our office once every month or so and give the most beautiful products of their minds and hearts to *The Masses*. Now you can see, Senator Thompson, that a magazine which is created in that spirit and which is not continually held in leash by the desire to increase its subscription list is bound to secure success. If I were an editor who sat up in a high chair, as Mr. Ward would like to have me do, to censor the religion and the art of the things these authors give me, I would not have any magazine at all. My policy is exactly the opposite. I think what America needs is free forums of public expression, and what I try to do with *The Masses*, within the limitations that are naturally set by my own faith, is to make it hospitable to every strong and sincere expression of opinion or feeling that cannot find a voice in the money-making press. My ideal is a free humanity, and I think the best way I can serve that ideal now is to help these gifted men and women get out one free magazine in America; they want to give to the American public their own intimate conviction, their own art, their own most sacred personal feeling. They are not able to do that under the ordinary editor because he makes them write and draw what he wants. He is a man with a technical knowledge of the magazine market, and what he wants is a magazine that will sell. There is no danger of such an editor offending many people, because if he did he would not make money; but there is danger of *The Masses* offending many people because nobody connected with it is trying to make money.

Now, with only one day's notice, and particularly at this time of the year, it was not possible for me to get all the representative citizens I wanted to get down here to tell you that they understand our religion, but I have brought a few.

Senator Thompson.—I have a letter from Mr. Frederic C. Howe, expressing his regret that he could not be here.

Mr. Eastman.—I am going to ask to testify and say just exactly what he thinks about the magazine and about the issue which was objected to, the man who is, in my opinion, intellectu-

ally the leading citizen of the United States, Professor John Dewey, of Columbia University.

Professor JOHN DEWEY, having been duly sworn, testified as follows:

By Mr. Eastman:

Q. Mr. Dewey, will you tell us first whether you think, from your reading of *The Masses*, however extensive it may have been, that it is blasphemous or indecent? A. I have not seen every copy of *The Masses* since it was issued, but I have seen it very regularly and been a fairly regular reader of it, and I have never seen anything which I regarded as either indecent or blasphemous.

Q. Do you think that Ward & Gow have a moral right to exclude *The Masses* from the subway stands? A. It is my personal opinion that it is very unfortunate that any private business corporation should have it in its power to determine in any way the trend and set of thought and ideas that should percolate to the community. That is to my mind the most serious feature of the present case — the exercise of a censorship by a business organization.

Senator Thompson.— Is it a power that ought to reside anywhere except in the Legislature? A. My own judgment is that it should reside simply in the Legislature and in the decisions of the courts pursuant to the acts of Legislature. I think otherwise we might find that certain business interests might object to any propaganda and exercise their power to cut it off.

Senator Thompson.— On account of the number of news-stands controlled in this contract, 140, it really does have an influence in what goes to make up a magazine, because there is an opportunity for distribution of the magazines that is foreclosed to anyone whose opinions or what they write might not be satisfactory to the person holding the contract for the news-stand, and by his refusal of those magazines and opportunity of sale there, why he has a certain power over the finest of the magazines, its ability to continue, to that extent it does create a censorship and whether or not such a censorship should be permitted is the only thing we

are interested in as a matter of legislation. My understanding is that in this country it resides in the Legislature.

Mr. Eastman.— May I ask him before he goes, whether he thinks it is a good thing for the young people of this community to have *The Masses* accessible on the news-stands? A. I think it is a good thing for them to have an opportunity to read it and to purchase it if they desire to do it. I don't think it will harm them in any way.

Mr. Eastman.— Professor, you are — A. Head of the Department of Philosophy and Education at Columbia University.

Mr. Eastman.— I am going to ask Lincoln Steffens to say a few words.

Mr. STEFFENS is sworn and testifies as follows:

Mr. Eastman.— Mr. Steffens, will you tell the Committee who you are and what papers you have been connected with? A. I don't know, really, who I am. I am a reporter.

Mr. Eastman.— Don't be too modest. A. I will say I am a reporter and a lobbyist.

Mr. Eastman.— Mr. Steffens, you saw Mr. Atkinson, the manager of Ward & Gow's distributing department, did you not, about this? A. Yes; at your request and at the request of *The Masses* I went down to see Mr. Atkinson, to see if we could persuade Ward & Gow not to exercise censorship over *The Masses* and put it back upon the stand. The purpose of that move was, from my point of view, to see if we could not get them to see the point about free speech and free press, without making a fight.

Some of the men on *The Masses* wanted to make a fight and I am against fighting except when it is necessary. However, I went down to see Mr. Atkinson and he received me and asked me curtly what my business was, and I said it was to ask him to raise the embargo upon *The Masses*, and he said, "That cannot be done." I asked him if he would give me a hearing, and he said, "Yes"; so I went inside and sat down at his desk with him and I said, "Mr. Atkinson, I used to be what they call a muckraker, had access to

magazines which gave me a certain power and I abused it. I used that power to blame men, to express more or less my feelings against men, individuals, and I know now that men are not at fault"; and I said, "Now, here come The Masses, a lot of your men, they have talent and their publication amounts to power." I said, "They abuse their power as they are bound to do, as all men in power abuse power." I said, "Then came Ward & Gow and they have a privilege from a privileged concern, which gives them the power to say what publications shall be presented in a certain way to the public and which shall not, so, of course, Ward & Gow abuse their power. This usually means fighting. Men can't express themselves, can't get together and can't have any understanding among themselves and so they go to war as they do in Europe." And he said, "Well, why not make The Masses stop publishing what they are publishing all the time?" I said, "That is not the way to begin. They are young men and they think these things and feel these things; let them express themselves. We don't want them repressed."

Well, he still wanted The Masses to make the first move and I said, "No, let's not ask The Masses to do anything in order to suppress anything, but you, if you are going to do this thing, do it right. Just freely give them the right to put the thing on the stand without raising any question." I said that I understood they proposed to make an investigation of The Masses and how Ward & Gow got their contract, what the relations were of the firm of Ward & Gow with the Public Service officers of the company and I said. "We should not ask them not to do that, but I think they ought to do that. I think they ought to do it for the public interest, not for revenge."

Well, the result of the interview was that Mr. Atkinson said it was a new point of view to him and he said he would take it up with Mr. Ward and would try to persuade Mr. Ward. So he went to see Mr. Ward and he told me a week later that they could not move Mr. Ward. Then I got his permission to make my appeal to Mr. Ward and I went and saw him; and Mr. Ward was hard. He was very explicit. He said that he had excluded The Masses from the stand because it had offended his religious sense. "Now," he said, "I have a right on any grounds to exclude any-

thing. I have two hundred applications for publications for space on my stand and I can't receive them all, so I have to exclude some and I excluded some because there is not space, but in the case of *The Masses*, I exclude it because it offends my religious sense." Then I said, "Mr. Ward, you are acting as a censor and you are deliberately taking over the responsibility for everything that is on your stands"; and he said, "I am willing to do that, but *The Masses* shall not go back on my stand. It is mine, it is my private property, I rent and control it, it is mine." "Now," he said, "I won't say it never will go back on the stand, because if they become decent and produce a publication like the *Atlantic*, then I will let it back upon the stand."

The whole point was that he was acting as a censor and that is very clear. There was some more, but I think that is all that is pertinent unless somebody wants to ask a question.

Mr. Moss.—Mr. Steffens, have you noticed or learned how many stands Ward & Gow have? A. No, Mr. Moss, I do not know.

Q. Have you learned or understood what proportions of news-stands in the city are run in the subway by Ward & Gow? A. No.

Q. I understand that it is approximately one-half of the news-stands in the city. Have you noticed on the subway news-stands or in connection with those stands any other articles, newspapers and books, for sale? A. Yes; they are selling candies and chewing gum and all sorts of little articles.

Q. Do you know whether those candies are examined to see whether they are adulterated or not? A. No.

Senator Thompson.—In their machines, I have measured it, one-quarter that comes out is made of paste board. I think the adulteration probably costs more than the candy does.

Mr. Moss.—Well, do you know of any difficulty in putting *The Masses* upon the regular news-stand upon the city's streets? A. No.

Q. There are no public officials that have interfered with *The Masses*? A. Not so far as I know.

Q. No police authorities or other authorities? A. Not so far as I know.

Q. There have been no societies that assumed to interest themselves in the morals of the community, interested themselves in their actions? A. No.

Q. Are you aware of any movement that has been afoot in connection with the subway news privileges to practice economy and economize the news privileges of the city? A. All I know of that is that it is a natural tendency.

Q. Are you aware that the newsdealers of the city generally have found it necessary or advisable to get together to resist what they look upon as an attempt to corner the business of selling newspapers in the city in the interests of those who represent Gow on the subway? A. I so understand.

Q. Well, you have not discovered, nor have I discovered anything whatever in the contracts or in the relation of things of this community that gives to a man or a firm controlling so large a portion of the output of news in this city, any right of censorship at all. A. No, except that we have granted to the subway company a public property.

Q. But you see, Mr. Steffens, the community is educated by what it reads and it gets what it reads, in large part, upon the news-stands, and if the subway stands represent so large a part of the purveying power of the community in the matter of the dissemination of news, it is a very serious matter if those having control of it for commercial purposes may exercise that power for personal reasons. A. Yes.

Q. I think that is the situation. A. That is the situation. Just one more monopoly controlling free thought.

Mr. Shuster.—Mr. Steffens, is this case of The Masses simply typical of a system of censorship exercised on the part of Ward & Gow? A. It seems to me that it is one more entering wedge by which not only Ward & Gow but all of what we call the interests are closing in on the press and all of us who write for the press, to keep us from saying the things that will improve conditions in the United States.

Mr. Moss.—Mr. Steffens, as a man of your wide knowledge and experience of things of this kind, do you believe that there is

a system of education designed to educate the young people of our country along certain lines? A. Not that I know of.

Senator Thompson.—He is asking you if you believe it? A. Did you ask me if there was an education system that is calculated to develop intelligence in the young?

Mr. Moss.—To develop — do you think that there is representative foundations along the lines that large interests may desire to educate our people? A. Yes; I think there is.

Q. And do you think that freedom of publications, even though occasionally that freedom may be abused, but freedom of publication is essential to an all around development of the young people in our country? A. Mr. Moss, by way of answering that, I will say that I am a member of the Free Speech League and we are working out upon a theory and our theory is that the purpose of all men, good and bad, is toward the same end, that is to get a fine, healthy, moral people, but our theory is at the Free Speech League that we can't get that by repressment, that if you repress expression in the labor movement, for instance, it will blow out in the form of dynamite, and if you repress the expression of sex feelings too much it will blow out in the form of conduct, and so we believe that the only way to get pure, clean, thinking and speaking and reasonable considerations of other men in speech and publications, is to let everybody say, everywhere, anything.

Of course, at first that will be abused, for a short time it may be very much abused, but in the long run it will achieve a freer, finer, more restrained press than other methods.

Mr. Moss.—I am not speaking so much of that as I am of what has been charged, that some well-meaning, wealthy and powerful individuals in our country, some of them dead, some of them living, have instituted movements and are carrying forward movements designed to produce in the minds of the young people of the country, through sustained foundations and through sustained colleges and schools, a state of mind favorable to those interests, and I want to ask you if you have any view upon that subject as a matter of fact. Do you believe it exists? A. Yes; except that I would state it in another way. I think that these large financial

and business and commercial interests of the United States, so far as they are intelligent, they are really functioning more on common sense than anything else, are lead by men of my class, so-called intellectual in the more deliberate efforts not exactly to teach what is wrong, but to teach what is right, they being the judges of right.

Mr. Moss.— Exactly. They are conscientious in it. I am not suggesting in my questions that the persons are not conscientious; they are; they see things from their point of view, but is there a systematic effort in your opinion to mould the thought of the youth of our country along those lines which those powerful and wealthy people believe to be the right lines? A. Undoubtedly there are. I was convinced that Mr. Ward was very sincere and the only trouble with Mr. Ward that I could make out from his own statements was that he was righteous. That is, that Mr. Ward had no sense at all that he was an evil doer or a criminal in any sense. For instance, he brought up the argument that he spoke of — Jesus — and I said, “Well, but Jesus was against the use of force”; and he said, “Oh, no, Jesus used force to drive the money changers out of the temple.” I said, “Yes, he did that. He drove business out of the temple. He lost his patience with business men and he also had no patience with the righteous.” And we talked quite a while on that point and all the while Mr. Ward was apparently entirely unconscious that he, Mr. Ward, was the kind of a man that Jesus would have driven out of the temple. Yes, he was perfectly honest about it.

Mr. Moss.— You think if Jesus had had a preference between Mr. Ward and some of the people that Mr. Ward criticised, he would take dinner with the man that Mr. Ward criticised rather than with Mr. Ward? I have asked these questions, Mr. Steffens, really to make a point upon the importance of what you call the entering wedge. When a man having a mere business contract, but under that contract controls so large a contract of literature, can assume, from his notions of what is right or wrong, to usurp the functions of the police and others, and himself become the arbiter — A. I think it would be better if this Committee, for example, could get together the business men who control in any

way the press of this city or this state and get them to see this point and voluntarily agree that they should not exercise censorship, but if no results follow in that, I would suggest to recommend to the Legislature an explicit legislation on this point, depriving them of all censorship and then that you go farther than that and look into your laws of this state and, if you can, go on to the United States and see and name and publish the very many laws that have been quietly passed that are gradually controlling public opinion in the press of the United States.

Mr. Moss.—It is a question, in my mind, whether you can't force Ward & Gow to sell your Masses, but that I don't express any opinion on. A. Then you would be acting exactly like Mr. Ward.

Mr. Shuster.—Mr. Steffens, if you have any suggestion that will be helpful to this Committee in regard to legislation, would you make it? A. I think it can be met only by direct action.

Q. Direct action on the individuals? A. Yes.

Mr. Moss — I hate to concede that any man having such power, a business contract as Mr. Ward has, can say what we shall read and what we shall not read.

Mr. Eastman.—It seems to me we have laws which establish that any telegraph company or express company has to carry anything you submit to it. We have a law that any news — you could have a law that any news company should have the same privilege.

Mr. Shuster.—How would you get around the proposition for all applicants to get their magazines displayed? A. There is not room for all to be displayed. Personally, I shall never hope to get any display by Ward & Gow, but he has room to have all the magazines there on sale when anybody asks for them.

Mr. Smith.—Wouldn't the business matter of checking up all the magazines be a responsibility that he might not care to assume?

Mr. Eastman.—No; because he is paid for it. He is selling space for fifteen dollars and I go and ask him if I may buy it and

he said, "No, I don't like your stuff." He makes money out of every magazine that comes in there whether any are sold or not, but then, in regard to The Masses, of course The Masses was there and he threw it out and also he stated specifically to Lincoln Steffens that he threw it out because of what he did not like in it, not because he did not have room. He has magazines there which do not sell as much as The Masses, and he has magazines there, also, which the authorities are prosecuting as unlawful.

Mr. Moss.— Does he sell Snappy Stories? A. Yes.

Q. If he will stand for Snappy Stories, then I have no patience with him. I think probably he can give Snappy Stories most of his booth.

Mr. PERCY STICKNEY GRANT is sworn and testifies as follows:

Mr. Eastman.— Dr. Grant, you are the pastor of the Church of the Ascension, are you not? A. Yes.

Q. Will you tell the Committee whether you think that The Masses ought to be excluded from the subway stands and whether you think it is indecent and blasphemous? A. I do not think it should be excluded from the subway stands. I do not think it is indecent nor blasphemous.

Q. Will you please recall the publication which was first thrown out of the subway stands and the poem in that publication which we have reason to assume, and you did assume, was the occasion for our being excluded from the subway stand and say the worst thing that you think about that poem? A. To me it was offensive as a matter of bad taste, but, then, I am a clergyman and it particularly assailed points of view or attitudes which a clergyman might be expected to hold. I felt, however, that that might have been a matter merely of editorial inattention or it might have been carrying the theory of The Masses, which after all is the theory of giving to the proletariat the widest expression of their theories, carrying that expression to an extreme. And yet I think that theory cannot be carried to such an extreme as to make that publication put under the ban on any stand.

Q. Do you think there was anything in that publication to make them think the editor was in a blasphemous or irreverent frame of mind? A. Not, certainly, from their point of view, and I am too accustomed to free expression of workingmen and their sympathizers on religious subjects to be personally disturbed, and I heartily agree with Mr. Steffens that nothing can do as much harm as suppression of what anybody wants to say on any subject. In fact, it was with that idea that the public forum of the Church of the Ascension was framed, which was the first forum to be established in any church, in order to give the freest platform to anybody, to say anything, with the belief that it was only in such a fashion that we were to advance to a knowledge of all the facts and eventually to a conclusion as to the direction of our social and economic progress.

Q. Do you read *The Masses* regularly? A. It is one of the newspapers that I look forward to with great pleasure. I feel that sympathy and intelligency of the writers of *The Masses* and largely their expert knowledge of social and industrial conditions makes a reader confident of the reality of what he reads in *The Masses*. That is a great relief to-day to a reader of periodicals.

Mr. Eastman.—Thank you.

I am going to ask Abraham Cahan to give his expression.

ABRAHAM CAHAN is sworn and testifies as follows:

Mr. Eastman.—Mr. Cahan, you are editor of the Jewish magazine. Will you tell the Committee what you think about this issue and about *The Masses* as an indecent and blasphemous publication? A. Well, I was brought up in Russia and I lived there about 34 years ago, and while I lived there I was used to phenomena of this nature, of magazines being suppressed because they are good, newspapers being suppressed because they dared to tell the truth; to me it is a Russian affair all the way through. It makes me almost homesick.

Senator Thompson.—What newspapers do you publish? A. It is only a Yiddish paper.

Senator Thompson.— Does your paper sell on the news-stand?
A. No.

Mr. Eastman.— What is the circulation of your paper? A.
About 210,000.

Senator Thompson.— You don't try for that. A. We do everything above ground. We see to it that our boys go to the subway stations with our papers in their pockets.

Mr. Eastman.— Thank you.

Is the Rev. Edward H. Sanderson present?

REV. EDWARD H. SANDERSON is sworn and testifies as follows:

Mr. Eastman.— Mr. Sanderson, you were formerly the pastor of the Church of the Pilgrims in Brooklyn and you are now connected with the Goodwill Industries in the same city. I want you to tell the Committee whether you think *The Masses* is blasphemous. A. No.

Q. What do you think of it? A. Why, I am very deeply interested in it. I have subscribed to it for the past two years, I should say, and have looked forward to each issue. I am too familiar with the Bible itself to feel at all shocked by any of the conceptions either of God or of Christ that have been brought in there. I feel that as far as blasphemy is concerned, conceptions which you can take out of the Old and New Testament of God are far more of a calumny against God than anything I have ever seen in *The Masses*.

Q. Did you read "The Ballad" which has been made a subject of discussion? A. Yes.

Q. Did you see anything in that to indicate that the author or the editor were in an irreverent frame of mind? A. The question came up in my mind as to whether that was written with a sincere motive. I could not make out. It was not that the thing shocked me, particularly, but where one is handling such a subject I would like to feel sure that he was perfectly sincere of what he was doing. I had a feeling of hesitancy in my own mind as I read it.

Q. Well, I want to tell the Committee that the author of that poem came down here this morning and offered to testify to the sincere, reverent and earnest mood in which it was written and in which he does all of his writing, but he has a job with a company which is so nearly akin in its nature to Ward & Gow that he was pretty sure that if he did testify he would lose his job and so I excused him from testifying. I can assure you, anyway, that it was reverently written. And may I ask you whether you think that cartoon is a religious cartoon, called "The Deserter," cartoon by Boardman Robinson, of July, 1916. A. I should say it had a very religious bearing.

Q. Here is a cartoon also by Robinson, which we are going to publish in our next issue and the title of that cartoon is "God"; the picture is God as a nine-headed military monster. Around the word God are quotation marks and around the base of the statue are the surging armies of Europe. May I ask you whether you think that is an irreligious cartoon? A. I should say that is a very good representation of the idea a good many people have to-day of God, and an idea which we are trying to combat.

Q. Thank you.

Amos Pinchot?

Mr. PINCHOT is sworn and testifies as follows:

Mr. Eastman.—Mr. Pinchot, will you tell the Committee what you think of the exclusion of The Masses from the subway stand from the point of view of justice and from the point of view of the law? A. I feel that it is unjust, but I don't think, on the side of justice alone, I can add to anything that Senator Thompson and Mr. Moss said a while ago. I do feel that on the side that Mr. Steffens took up, the public policy of exclusion, I could perhaps add a word. I don't consider that the argument for free speech, free expression, is at all a clear, obvious argument. I think that if the man, Mr. Ward or anybody else, could be absolutely sure that something that was going to be published and distributed would hurt the public, I think he would be right in excluding it from public circulation, he would be right in one sense at all events,

but I do feel that however conscientious he might be and however right he might be from his own point of view, it is a mighty dangerous thing to do, because there is no guarantee that a man with Mr. Ward's power will use that power justly or for the benefit of the public. It is perfectly possible that some other man in Mr. Ward's place would come along and decide to exclude all the decent publications and only circulate the kind of publications that are circulated on news-stands by which the monthly magazines increase their circulation. I could give you instances of where a magazine, by publishing sex motive stories, has increased its circulation from 250 to 450 copies, stuff that I think is really rotten.

Senator Thompson.— You can go to the theatres here in New York and find a whole lot of it and pay \$2.00 a seat for it. A. History has shown pretty plainly that all of these movements to exclude and to guard people from ideas are unsound and that the only safe conservative thing to do is to let the ideas loose in the community — let them loose — leave them alone. If they are bad ideas they will be destroyed by the good ideas that are in the world; if they are sound ideas they will maintain their position in the world and grow in strength.

Now, I have seen *The Masses* on tables of girls' boarding schools. It is on my table. I never miss a copy, my children read it. I give it to my little girl because the art features of it are very, very fine, I think. I like to have them read it; I like to have them get away from the idea of prudery and secret things and right out in the open. I like to have my children talk to me, I hope they always will, as frankly as *The Masses* talks to the public, and I regard it as a very valuable publication.

I agree with Senator Thompson and Mr. Moss — at least I think I agree with them, if I understand their point of view, and that is that the great danger to this country is in the control of ideas, for ideas are the source of everything. Any man that controls ideas, controls the world, and if there is one single principle that is absolutely vital to society, more vital than any kind of physical freedom, it is mental freedom, for that is the basis of all freedom.

Senator Thompson.—The question of what is decent and what is indecent is one that is very hard to pass upon. A. Personally, I have never seen anything that I considered indecent in The Masses.

Mr. Eastman.—Senator Thompson, I am going to ask Mrs. Rose Pastor Stokes to testify.

Mrs. STOKES is sworn and testifies as follows:

Mr. Eastman.—Mrs. Stokes, will you tell the Committee your opinion as to the reverence or irreverence of what we are discussing? A. When I heard "The Ballad" discussed and when I remembered that when I was a little girl in a Jewish family, my mother and other women whom I knew and came in contact with, told or gave this conception of Christ and the story of Christ and Joseph exactly as it is given in "The Ballad," so that when "The Ballad" was read I wondered whether the writer of it was a Jew or had heard the Jewish—I should not call it the Jewish conception, perhaps it is just a legend that has passed among some of the Jewish people—I never regarded it as irreverence. It was told me as the matter of course conception, that was how I first heard of Jesus, that Joseph married Mary because he wished to protect her against the gossips of her town and that he was so fine in doing it and Jesus grew up and made himself out to be a God and then the people killed him. That is all I can say about it. To me it was just an expression of a certain conception that is given in a most earnest spirit by people who hold it.

Q. Senator Thompson, I just want to say that Miss Alice Carpenter, of the Woman's Society Club came down here to make the same testimony and she had to go. Rabbi Stephen S. Wise, knowing the circumstances, told me I could use his name in any connection I wanted to, and I want to say that Rabbi Wise does not regard that poem as irreverent or blasphemous.

Mr. Shuster.—Might I ask whether this "Ballad" was written by a Jew?

Mr. Eastman. No; it was written by a Yankee.

Mr. Shuster.—I should say that the man was a super-Christian. It sounds to me as though he took Christ seriously.

Senator Thompson.— You should not take Mr. Shuster too seriously; he could not quote a stanza from the Bible to save his life.

Mr. Shuster.— But I still have respect for the Bible.

Mr. Eastman.— Somebody has suggested to me that if Mr. Ward was a sincere Mohammedan he would have to exclude the Christian Herald from the news-stands.

I want to take about fifteen minutes of your time to read telegrams and letters. Rev. Crowley, the editor, says that the exclusion of *The Masses* from the news-stands of the public at the discretion of the lessees may or may not have a legal justice.

Walter Lippman, another editor of the *New Republic*, also came down here and left a few moments ago. He prepared a statement which begins as follows:

“ I am here to protest against the establishment of a censorship by a private corporation conducting a public service.

“ I recognize that, as a matter of practical administration, it may be necessary for the news company to exclude obviously indecent matter published for purely commercial purposes. But the case of *The Masses* can by no stretch of language be made to fall under this classification. It is a publication conducted by sincere and talented men out of deep conviction; men who, if they wished to, could easily devote their abilities to making money. They have chosen deliberately to publish a paper which demands constant personal sacrifice; and it would be wretched public policy to suppress or hamper any such effort. The worst that can possibly be said against *The Masses* is that it occasionally offends against the canons of good taste held by a majority of people in this country. It is a good thing for people to have their taste offended, because not all that passes for good taste is really so good as people pretend it is.

“ Certain business men in control of a private corporation are not the proper agents for exercising a censorship in matters of taste. If you will look at the publications now sold on these news-stands you will find any number which are more obscene, more unpatriotic, and more vulgar than any-

thing that *The Masses* has ever been. *The Masses* has never commercialized licentiousness nor prostituted patriotism as some newspapers and magazines with wide circulation regularly do.

"It is the fact that the company which suppressed *The Masses* has not suppressed these other papers and periodicals, that leads men to the conclusion that *The Masses* is excluded not for obscenity or lack of patriotism, but for its radicalism, its courage and its inconvenience. It will be an evil day for this country, when a group of business men who control an important means of distribution can exercise an irresponsible censorship because of religious or political prejudice."

Frederic C. Hower, the Commissioner of Immigration, wrote a letter to your Committee as follows:

"I understand that the Senate Committee is to have a hearing to-morrow on the exclusion of '*The Masses*' and other publications which do not meet the approval of Ward & Gow, from sale in the stations of the Interborough Railway. It has always seemed to me to be a violation of the rights of the public for a private concessionaire or contractor to assume the right to exercise censorship over any publication, especially those that are not objected to by the postal authorities and that are circulated throughout the country. Were it possible for me to do so, I should be present in person to urge some action to end this, to me, unjustifiable private censorship and bring about that freedom for the dissemination of literature that the Constitution and laws provide."

Charles P. Fagnani, who is a teacher of Christian Theology in Union Theological Seminary, says:

"I have read *The Masses* from the beginning and do not consider it immoral or blasphemous. The remedy for alleged damage done thereby is to be sought in the courts. I deprecate as fundamentally illegal and un-American any interference with its circulation other than by due process of law."

Judge Learned Hand writes me the following letter:

"I have your letter of the 26th, asking me to say that I think '*The Masses*' ought not to be excluded by Ward &

Gow from the news-stands. I answer unhesitatingly that I think it ought not. I do not often see your paper, and as you probably can guess, I do not feel sympathy with your approach to the question of social and economic reorganization, or the means by which you seek to bring it about. That I prefer another way, does not blind me to the wisdom of giving you the chance to persuade men of yours. I have never seen anything in 'The Masses' which did not have a sincere and genuine relation to these absolutely legitimate purposes. Parts of it have at times been extremely repellant to me, but that, in my judgment, has nothing to do with this matter. Yours is a way, whether it is a good way or a bad way, of getting men to think and feel about those things on which it is most important that they should think and feel. I can conceive no possible defense for excluding you except either that such matters must not be discussed, or that they must be discussed only in a way which accords with the common standards of taste. One alternative is tyrannous absolutism; the other tyrannous priggism."

Mr. B. W. Huebsch, a publisher, has written:

"In my opinion the exclusion of The Masses from the subway news-stands is as unwarranted and as unjust as if the president of the Subway Company were to forbid my riding on his cars because he does not like my face. The operation of a news-stand is a public service of the same nature as the operation of the trains. If public servants are permitted to misuse the public service in the interest of their prejudices, there is no reason why a Catholic elevator-man in the Municipal Building may not refuse to take a Protestant passenger.

"If the question were one of merit alone, an impartial jury of intelligent men would, after examining the magazines now on sale in the subway, throw most of them out and substitute The Masses. The average magazine is the champion of tradition; The Masses has no respect for traditions as such but only for intelligence. And that has always been a crime!"

Mitchell Kennerley writes me a letter to the same effect, as follows:

“After nineteen years of dealing with Ward & Gow, I see no excuse whatever for their action, and think that there certainly cannot be any authority on their side. In my opinion they have no more right to exclude *The Masses* than they have to refuse to sell me an individual one of the magazines displayed on their stands. I congratulate you upon making a fight to have the magazine reinstated, and trust that you will be successful.”

Mrs. Florence Kelley, president of the Consumers' League, says:

“I am very sorry indeed that I am obliged to leave town to-day and, therefore, can not attend the hearing on the arbitrary exclusion of *The Masses* from the subway news-stands. What a travesty upon the freedom of the press that the morals of New York City are entrusted to censorship by Ward & Gow!”

Professor James Harvey Robinson, of Columbia University, says:

“It seems to me preposterous that *The Masses* should be excluded from news-stands on the hypocritical grounds alleged, and I should heartily sympathize with any measures to coerce the company controlling the stands.”

Judge Ben Lindsey says:

“Restrictions like barring *Masses* from subway is a violation of the right of free speech and so outrageous an assault on freedom of the press and decency in general, I cannot believe it will succeed. There should be and I believe will be some remedy against such oppression and injustice. Wish you success.”

Mr. George W. Kirchwey, warden of Sing Sing Prison, says:

“Am extremely sorry that I cannot attend meeting Wednesday and express, in public, my opinion of the Ward & Gow censorship, an unpardonable interference with the

liberty of the press. The greatest need of a community which tolerates such an abuse is *The Masses*."

The editor of the *Metropolitan Magazine*, H. J. Whigham, says:

"As a subscriber to *The Masses* and as a fellow publisher, I wish to challenge the right of Ward & Gow to exclude *The Masses* from the stands of the subway and elevated. While I may not extremely agree with the policy of *The Masses*, I believe it to be a thoroughly sincere publication of real value to the country, and any effort to silence *The Masses* is in effect an attack on the liberty of the press."

William Marion Reedy, the editor of the *St. Louis Mirror*, says:

"I understand that *The Masses* has been barred from public sale by a private firm. The interference with freedom of printing by government is abominable. But such suppression by a private corporation is an atrocity. If *The Masses* has violated any law, its publishers are punishable by law, not by private confiscation of their property. I know nothing of the grounds upon which this paper is excluded, but no ground for such action by a private corporation can be good ground. The Committee should read the passages on 'Freedom of Speech' from Milton's 'Reason of Church Government Urged Against Prelaty,' and from his 'Areopagitica.' It seems that the action against *The Masses* is the exaltation of private over public law, that is a clear case of lynching a publication."

The editor of *Hearst's Magazine*, Sewell Haggard, writes as follows:

"If Messrs. Ward & Gow exclude 'The Masses' from subway and elevated news-stands because in their opinions 'The Masses' is an improper publication, they are doing something they have no right to do. Messrs. Ward & Gow have the right to decide whether or not they will read 'The Masses,' but they haven't the right to decide whether or not I may read it. Yet this is, in substance, what they are trying to do.

“ If Messrs. Ward & Gow removed every publication from their stands except ‘ The Masses,’ thereby saying, in effect, to the millions who patronize subway and elevated news-stands, ‘ You shall read nothing but ‘ The Masses ’ because all other publications are unfit,’ their position then would be just as logical as their present position.

“ Messrs. Ward & Gow are no more competent to dictate to the public than Messrs. Jones and Smith. Civilization has outgrown dictators and censors. If ‘ The Masses ’ is an improper or worthless publication, the public will not need enlightenment from Messrs. Ward & Gow; the public will act as its own censor and ‘ The Masses ’ will cease to exist.

“ I do not always agree with the editorial conclusions of ‘ The Masses,’ but its columns are beneficial because they stimulate thought about problems that we ought to think more about.”

Miss Vida D. Scudder, professor of English literature, at Wellesley College, telegraphs:

“ The last number of Masses, the most valuable contribution to sane thinking, should be wisely read. Are we in Russia? ”

Rev. John Haynes Holmes, pastor of the Church of the Messiah, says:

“ Of copy of ‘ Masses ’ excluded from subway, I can say nothing, as I didn’t see it. But this is not the question. You are concerned with the general issue of exclusion and of this I gladly speak. That Ward & Gow should be judges of literature to be distributed to the public is as ridiculous as outrageous. I question the fitness of the purveyors of ‘ La Parisienne,’ etc., to determine for me what is immoral. I challenge under any condition their right. Such right, even when exercised by public authority, is dangerous. When exercised by private whim or prejudice is intolerable.”

Senator Harry Lane telegraphs from Washington:

“ I am opposed to arbitrary action on part of anyone in excluding Masses or any other magazine from sale by news-stands engaged in selling publications.”

The Rev. Nathan Haskell Dole, a Unitarian minister of national reputation, writes me:

"I don't very often see *The Masses*, but I like it. Even that so-called blasphemous poem was fine — in its way."

Edward C. Marsh, vice-president of The MacMillan Company, writes:

"I believe *The Masses* ought to have the right to representation on news-stands on exactly the same terms on which such right is extended to any other magazine. I do not know the grounds on which it has been excluded from the subway and elevated news-stands, but I am strongly opposed to such exclusion if it implies the slightest discrimination against *The Masses* because of its political or social opinions."

Fremont Older, the editor of the *San Francisco Bulletin*, telegraphs:

"I sincerely hope that the New York officials will not succeed in stilling the one free voice in American journalism. *The Masses* is the only light that is burning just now. The entire *Bulletin* staff joins me in the hope that the attempt that is being made to hurt it will fail."

Helen Keller telegraphs:

"Glad Thompson Committee will investigate exclusion of *Masses* from subway stands. For private corporation to have such power over dissemination of intelligence is outrage. News-stands must be impartial if freedom of the press is to mean anything. Hope Committee will compel recognition of responsibility of this public service. If *The Masses* is good enough for me to read, I think it will not harm subway patrons."

Frank P. Walsh telegraphs from Kansas City:

"An imperative engagement in Denver keeps me from appearing before Legislative Committee this morning to enter my most profound protest against the undemocratic and un-American conduct of those who would exclude a publication like *The Masses* from the subway stands. Fearless publicity is the only remedy for wrong conditions, social,

moral, or political. The subway stands have become the most important and necessary avenue of free communication in the greatest city in the world. Any such inhibition on the right of free speech and popular interchange of ideas, right or wrong, is a cowardly and underhanded blow at the onward progress of the race. I sincerely hope that the Legislative Committee which has the matter in charge will take such action that the wrong may be swiftly righted."

Professor Ellen Hays, of Wellesley College, telegraphs:

"The attempt to destroy *The Masses* is an ominous invasion of citizen rights of free speech and free press."

Charles Scribner's Sons writes:

"We are emphatically opposed to the effort to exclude *The Masses* from news-stands. The public should be permitted to buy it where most convenient."

Clarence Darrow writes:

"If the news venders of New York can tell the people what not to read, then some intelligent authority ought to choose the venders."

Mr. Alva E. Belmont writes:

"I read *The Masses* regularly and have great confidence in the judgment of the editor recognizing the necessity of free speech for the education of the people of this country. I consider it an outrage to discriminate against it."

By Mr. Smith:

Q. Do you recognize that under our government and legislation a single individual, the postmaster general or his designated subordinate, passes on what shall go through the United States mail? A. Yes, sir.

Q. You also recognize a difference between the Christian and Jewish interpretation of Christ and that what might not be blasphemous for a Jew might be recognized under our definition of a Christian as blasphemous? A. I might say that what might not be blasphemous against the Jewish God —

Q. You recognize that there might be a difference? A. There might.

Q. You recognize the right of each individual to have an opinion of his own? A. Yes.

Q. And I assume that you would recognize the right that I was under no obligation to disseminate opinions, valuing opinions, merely as an individual. Now, neither my own personal obligation exists, nor does the machinery over which I have legal control obligate me or my machinery to help disseminate opinion with which I disagree; that is true, isn't it? A. What machinery is that?

Q. Whatever it might be. For instance, a printing press. Am I obliged to use my printing press to help disseminate your opinions? A. Not unless your printing press is engaged in disseminating public opinions.

Mr. Shuster.—I think in order that when this matter comes before the Legislature it can be understood clearly that this ballad should be printed into the record. There is a lot here about this ballad. A. I would like to ask the representative of Ward & Gow whether it is on the basis of "The Ballad" that The Masses is excluded from the subway?

Mr. Quackenbush.—Let me say that you are addressing a member of the Committee. A. He has the manner and bearing of a representative of Ward & Gow.

Mr. Smith.—Your last statement is a little bit personally offensive. A. What was it?

Mr. Smith.—That I had the manner and appearance of a representative of Ward & Gow. A. Thank you very much for saying that.

Senator Thompson.—In conducting this investigation this Committee surrounds itself with men of different temperaments and different opinions and men who look at public questions and matters that are to be investigated in different ways, I would not if I agreed with them, or any one of them on everything they think—I would resign in a minute, and if any one of them agreed with me on everything I think, I would discharge him in a minute, because I want the viewpoint of every one around me; Smith has his, Shuster has his, and everybody else has his, and Mr. Quacken-

bush has his. Now, those things are all there. It is the same thing with you. You are an individual attempting to be heard, and you are entitled to be heard just the same as I hear Smith or Shuster or Mr. Quackenbush or anybody else, and whether Mr. Smith likes your opinions, or whether he likes your ballad, he has to let you express your argument. Now, that is all the decision this Committee can make in this matter. A. I want to thank you. May I say that if my remark was offensive to Mr. Smith I wish to withdraw it.

Senator Thompson.—I know it is not offensive to him. I know him too well. A. May I ask you, Mr. Shuster, if you think that a poem which celebrates a unitarian conception of Jesus of Nazareth ought to be excluded for the subway stands?

Mr. Shuster.—That is not a matter for me to discuss.

Senator Thompson.—We will adjourn now until 2:45.

AFTERNOON SESSION.

HENRY SMITH is sworn and testifies as follows:

Mr. Moss.—Mr. Smith, what official position have you held and do you hold in the city of New York? A. I hold no official position now. I was park commissioner when George B. McClellan was mayor.

Q. Commissioner Smith, I want to ask you about running of Fifth avenue stages up Riverside Drive. Did that begin during your administration? A. The stages were operated during my administration.

Q. I wish you would tell in your own way, without prompting or questioning, what you recall about them. A. The stages were operating on Riverside Drive and I received, as president of the Park Board, a letter from James J. Derring, complaining of the operating of the stages, saying that they had no valid franchise and I should stop their operation. I sent that letter to the corporation counsel and asked that he advise me. They had hearings before Mr. Burr, and Mr. Derring appeared on one side and Mr. Paige,

I think, appeared for the stage company. The hearings went on for three or four months and then an opinion was rendered me by the corporation counsel advising me that they had no valid franchise and advising me to stop their operation and I stopped it and it was continued until I went out of office.

Q. Do you know anything about the resumption of the operation of the stages? A. It was resumed immediately upon appointment of Mr. Stover as park commissioner of Manhattan by Mayor Gaynor. Mayor Gaynor writing him a letter with the appointment, telling him unless there was some legal obstacle in the way to let them continue to operate, and they have continued to operate ever since.

Q. You have never heard of any objection stated in legal terms to the opinion under which you acted? A. None whatever.

Q. You never heard of the opinion of the corporation counsel which advised you being overruled in any way? A. It was never litigated in any way to my knowledge.

Q. So that the putting of the stages back was partly due to the mayor's direction? A. Absolutely.

Q. What was the effect, in your opinion, of the operation of those stages on Riverside Drive? A. I hardly can answer that.

Q. Do you think they have a good effect on the drive? A. I don't think it affects the drive now as much as it did. They have a pavement now which stands their operation. During my administration we had no such road there and we had an earth road which they destroyed and made it very expensive for the city and the park department.

Q. Don't you think that the operation of those heavy stages on the road that they now have makes it necessary to repair more frequently than if they were not running? A. I have watched it very closely, Mr. Moss, and I can't say that I do. I have examined those roads with a great deal of care both in winter and summer with that in view, because one man came to me years ago and said he thought road building had not arrived at that stage where it would not wear out.

Q. When the stages began to run under Commissioner Stover were the roads improved in their present condition? A. They had ruts in them then anywhere from an inch to a foot deep.

Q. So that the improvement in paving has been since those stages were restored? A. Yes.

Q. I want to ask you particularly, Mr. Smith, about this much-discussed improvement that is contemplated, this improvement on Riverside Drive in connection with the New York Central Railroad. When I say on Riverside Drive, I mean involving a part of Riverside Drive. You are quite familiar with that? A. I am. I live at 110th street and Riverside Drive.

Q. We have been told, Commissioner Smith, that plans that have been printed and published in the newspapers are far from being accurate. A. I saw a picture published in one of the papers which showed such an improvement but was not in accordance with plans at all.

Q. What are their plans as you understand them? A. Their plans is to make a ditch that would cut through there and cover it. Generally, that is their plan.

Q. Well, will the train operation be entirely covered? A. It is intended to be entirely covered through Riverside Park, from 125th street to 72d street.

Q. Can that work be done for \$300,000 in your opinion? A. Do you mean the whole work?

Q. The work that they say will be done for \$300,000. A. The restoration — Oh, no! nonsense! It can't begin to be done for that.

Q. Well, they have succeeded in getting some support and overcoming some objections by the claim that \$300,000 would cover the restoration of the park. And you say that that is entirely inadequate? A. In my judgment I believe it is entirely inadequate.

Q. Have you a judgment or an opinion as to the amount that would be required? A. I think it would take over a million dollars from figures that I have roughly made in considering the matter.

Q. And when the thing is all done, according to your opinion, upon the plans as they have been outlined, will Riverside Park be placed in substantially the condition that it is now, so far as its accessibility and its use by the public and its beauty is concerned?

A. I believe that the plan, if it were carried through, would practically ruin Riverside Park.

Q. Does this plan as it now stands, involve any advantage to the New York Central Railroad? A. I should say it was a great advantage.

Q. What advantage? A. First, they would have a perpetual franchise there. They would have a perpetual right to operate that, I believe. If you want me to give you my idea, I believe that this is an improvement that ought to take place, but it is going to be an improvement for all time and it ought to be done properly. I believe that the park department is very, very much interested in it and I believe that the park department should be made a party to this committee, or whatever they call them — the Port and Terminal Committee — and they should be consulted on everything that is done there and I believe that whatever is done there should contemplate a restoration under the supervision and direction of the park department, plans and specifications to be prepared by them, then what should be done, they have competent men there to do that, and that the New York Central should pay for it. We should not have an open ditch there for four or five years while this work is going on and then have it roughly covered over and have it an eye sore there for years and years to come, because if money and plans are not provided for when it is started, it won't be done for years.

I can give you an illustration in Broadway. Before they started to build a subway they had four rows of magnificent elms up there. They said, "We will go through that street and we will restore it." They went through the street and for years there that street was dug up and when they did restore it, it was so bad that private estates, like the Clarke estate, repaired one block at their own expense. And during the administration of Mayor McClellan, the Board of Estimate furnished a small amount of money and with that it was restored under the direction of the park department to the condition it is in now. Of course, the elms were never restored; the soil was so shallow that the elms would not grow and that would be the result here.

Q. Mr. Smith, I addressed the president of the Public Service Commission asking whether this matter did not come under the

supervision of the Public Service Commission and asking what has been done and his answer was substantially, that while it would have come under the oversight of the Public Service Commission originally — the Public Service Commission had been divested of authority by an act of the Legislature, so that the Public Service Commission is entirely out of it, although there is a relocation of tracks, possible change of power and various things which ordinarily — it is in opposition of a company having a terminal in the city — but ordinarily it would be under the Public Service Commission, but by special legislation it has been taken out. Have you noticed in your observation of this matter any apparent indication of a desire to hurry it through? A. Why, I thought I had.

Q. To hurry it through before there was any proper attention given to it. Have you heard whether any persons in the city government have appeared to be especially interested in hurrying it through? A. I would hardly like to criticise.

Q. You can answer that yes or no. A. I have thought I have observed individuals.

Q. Are you willing to state ——? A. I would not care to criticise the public officials. I remember the West End Association had a hard time. We were willing to hire the best landscape architects we could and go into this question, and they were quite loathe to give us time to be heard but they finally did.

Q. The matter has been brought to the attention of the Committee and the Committee has felt that it had a right to go into it, to develop the facts, and so I say to you, as a resident of that section of the city and an observer of these things, that you are free to say anything now that you would like to say, which you would think would add to our information. A. The only thing I can say is this: It is a great public improvement. I took this up ten years ago and I got from the Board of Estimate ten thousand dollars to make plans. At that time I went out of office. As to what should be done there, I believe that if care was taken that they can formulate from what they have got, plans. I don't believe that anybody ought to chop down trees, but there must be something that is going to be restored, that you are not going to go along in the start if that money is not forthcoming before they start,

thereby going along for years. You will have that raw aqueduct through there for years to come. It will look — if you have ever seen an old right-of-way of a railway that has not been built up, that is about the way it will look. From the Sailors and Soldiers monument it is out of the ground; sticks out twenty or thirty feet above the ground; it runs right across, right along there, to the wall of Riverside Park.

Q. It would interfere with all the beauty there is there? A. It will ruin the beauty. There won't be any beauty left.

Q. And if provision is not made now for putting a proper proportion of burden upon the railroad company, the things that must ultimately be done for the restoration of beauty so far as possible, has got to fall on the city? A. Absolutely. And it requires money to do it and you will have that in finishing conditions continuing along there just as you did in Broadway.

Q. That is enough, Mr. Smith. We will now have Mr. Burr.

Mr. Smith leaves the stand.

Mr. WILLIAM P. BURR takes the stand and, having been previously sworn, testifies as follows:

By Mr. Moss:

Q. Mr. Burr, you were formerly assistant corporation counsel?

A. I was.

Q. Did you have any knowledge or anything to do with the Fifth avenue stages about which I have spoken to Mr. Smith? A. Yes.

Q. Will you please tell us what you know about it?

Senator Thompson.— Will you have a subpoena for Mr. Joseph P. Hennessey, former chairman of the Board of Assessors of the city of New York from 1910 to 1913 — Joseph P. Hennessey? And ask him to bring with him all correspondence had between him and the Board of Assessors and the Mayor of the city from the time in January, 1910, that he was appointed until the time he resigned in 1913? Also a report made by him to Mayor Gaynor in 1910?

Mr. Moss.— Now, Mr. Burr.

A. Mr. Moss, I did not expect to be questioned with regard to that particular matter and I have no data with regard to it here.

Q. It was something that came up. A. I do remember distinctly the opinion which I wrote with regard to the right of the stage company to operate on Riverside Drive and there I held in that opinion, which was approved by the Corporation Counsel, that the stage company had no right to operate in the park and Riverside Drive, which has been declared judicially to be a park, but that opinion was nullified by the consent which was given to the company to operate.

Q. Given by whom? A. By the then administration.

Q. Do you remember the time when the Gaynor administration gave that consent? Were you still in the Corporation Counsel's office? A. Yes. The opinion was never followed as a matter of fact, though it was written as advice to the Commissioner of Parks, asking to be advised as to the authority of the company on Riverside Drive.

Q. Did not the then Commissioner stop the stages after you wrote the opinion? Mr. Smith says he stopped the stages. A. I think that was on the ground that they were destroying the trees, the height of the stage affected soft trees and there was a criminal proceeding drawn. That is my best recollection about it.

Q. But when Mayor Gaynor directed those stages to be allowed to run on Riverside Drive he was not after any legal discussion? A. No, it was a policy which he adopted and I think he said that the people were entitled to go through there in their public automobiles, he called them.

Q. And at that time those stages belonged to the Interborough Company? A. I simply advised him as to the law; he pursued his own policy. If you will take up the electric subways, I have my papers arranged.

Q. I withdraw my question to you, Mr. Burr, and direct your attention to the electric conduits which are run through the streets of the city by the Empire Company and the Consolidated Company. The Committee has not been informed about this matter except in a very fragmentary way to date and we understand that

you have a very accurate knowledge about it. I would like to have you tell the Committee, in your own way, if you will, about the law that was passed, about how these subways began, how the companies were formed, and then the efforts that were made by the city to repossess themselves of some of these conduits and bring it down as near to detail as you will. I would like, Mr. Burr, not to interrupt you with questions, but to let you in your own way explain that matter. A. I will tell you as briefly as I can. These existing electric subway companies are in existence as the result of the passage of certain laws known as the subway laws, chapter 534 of the Laws of 1884, requiring that on or before the 1st of September of 1895 all the then existing wires that were strung overhead should be removed, but that act made no provision as to what was to be done with them or how they were to be put underground. So another act was passed, chapter 497 of the Laws of 1885, which was a law authorizing a commission of the subways and empowering that commission to prepare a plan for the construction of electric subways underground in which these wires were to be put. That act was elaborated under chapter 716 under the Laws of 1887. The commission which was appointed sought a method of putting these wires underground. It was a difficult thing, a new thing, and finally a contract was made with the Consolidated Telegraph and Electric Subway Company whereby that company agreed to put these wires underground and to operate this new instrumentality.

Q. What officials contracted with that company? A. This Board of Electric Commissions.

Q. Are you able to tell under what auspices that company was formed? A. This company was formed under the Telegraph Act.

Q. I know, but did any existing company take part in its organization? Did it represent any company? A. Well, later on it developed that the capital and stock was supplied and subscribed for mainly by the telephone company. It was then known as the Metropolitan Telephone Company. The companies refused to put their wires underground, and it is a well-known fact that Mayor Grant in 1889 or 1890 went out with a *posse comitatus* to chop the poles down. The companies went into court and claimed that these acts were confiscatory.

Q. He did not hit any telephone poles with his axe? A. I don't know that he did. The result was that the courts decided that it was not a confiscatory piece of legislation, that it was the police power of the State and that this was merely a regulation of an existing franchise, so that these companies then commenced to put their wires in the conduits supplied by the Consolidated Gas and Electric Subway Company.

Q. The proposition as I see it is this, that the companies found they had to put their wires underground and this Consolidated Company represented the most important wires that were running—wire poles? A. The telegraph companies were more interested in it than anybody else. Well, these contracts were made and in 1887 there were two contracts, one made in 1887, and those contracts were ratified by the Legislature by chapter 716 of the Laws of 1887. Now, that was the situation and the company was in operation for many years after that, until about 1903 Robert Grier Monroe, being the Commissioner of Water Supply, Gas and Electricity, it was claimed—I forgot to say that in 1891 there was a division of the work of these subways, the high tension portion of the work was retained by the Consolidated Telegraph and Electric Subway Company and the Empire City Subway Company took over the conduits and undertook the building and construction of conduits under what is known as the low conduit. The Consolidated Company to-day is controlled by the Edison Company and the other is controlled by the telephone company. So, in 1903 Robert Grier Monroe made a demand upon these companies for an examination of their books—

Q. Before you come to that, Mr. Burr, is there a clause of recapture or substantially a clause of recapture in those contracts? A. The contract of what? The contracts provide that the company was to construct the subways and it was to receive as compensation for the work it did all over and above ten per cent that was earned on the cost of construction. The contract provided that in view of that agreement on the part of the city to allow them to retain all over and above ten per cent, to guarantee them ten per cent on the money or capital invested, the cost of construction, the city was to receive all over and above ten per cent, that they were to keep proper books of account showing in detail

all the items which entered into this construction and those books were to be examined at any time that the city so desired, and the contracts very precisely stated what it would require these books to show.

Now, it provided that if at any time in the opinion of the parties of the first part or their successors there shall be a substantial failure by the party of the second part to fully carry out the provisions of said agreement made on the 27th day of July, 1886, as amended and modified by this agreement, and it is so adjudged by competent judicial authority, the Mayor of the city of New York may enter into the possession of said subways and the party of the second part shall be subject to any valid mortgages then outstanding, not exceeding fifty per cent on the actual cost of such subways and all leases or contracts then existing for the use thereof, forfeit its interest in such subways and will quietly surrender the possession thereof to the mayor of the city of New York, who shall then and thereafter hold and own the same, subject to the same powers and duties to the parties of the first part and their successors as the same would otherwise have been held to the parties of the second part and the same shall be maintained and operated by the said Mayor of New York by the parties of the first part or their successors, subject to such lawful leases and contracts.

It was further provided by the contract that said party of the second part shall at any time after January 1, 1897, upon the demand of the Commissioners of the Sinking Fund in the city of New York, by proper instrument or instruments of conveyance or transfer in due form and duly executed, sell, assign, transfer and convey to the Mayor all or any of the subways constructed by it and all or any of the contracts or other property of any kind held or owned by the party of the second part for any of the purposes of its incorporation, subject, however, to all leases, mortgages or contracts theretofore lawfully made within the limitation proposed by section XII of this contract when the said Commissioners of the Sinking Fund shall request them and for the payment of which shall provide as provided by any law hereafter passed.

And if the said company shall not have earned ten per cent per annum on actual cost during the term of this contract a further payment shall be made not exceeding ten per cent on such cost to the extent of such deficiencies.

Those clauses are substantially the same in all the contracts.

Now, in 1903, for the purpose of asserting the true cost of the construction of these subways, the Commissioner of Water Supply, Gas and Electricity, Robert Grier Monroe, applied for leave to examine the books of these companies, claiming that the annual statements which were required also by these contracts to be filed with the Comptroller were not true and accurate statements and that he was entitled under the terms of the contract to this examination which he now demanded. The Comptroller designated the man, Mr. John K. Hayward, to make the examination and he claimed that there was delay and hindrance in making such examination. That is, delay and hindrance by the company.

Finally, however, he was permitted to make an examination, and the Commissioners of Accounts, of which Mr. John K. Hayward was chief accountant, made a report, and upon that report a suit was instituted in 1903 against both of these companies, claiming that they had failed in a material respect to carry out the conditions of these contracts and asked that it be judicially so determined and that the subways be forfeited under the contracts themselves.

I was appointed Assistant Corporation Counsel in 1904 and this was the first litigation that was handed to me when I entered the Law Department.

The complaints were demurred and the demurrers were sustained, and hence it was necessary for me to begin an investigation into all the circumstances relating to this proposition. New complaints —

Q. Before you get to that, all wires had to go into these ducts?

A. Yes, the city through these commissioners obligated itself to compel all duly authorized companies to put their wires in these ducts.

Q. And those companies charged rentals for the wires? A. Yes.

Q. And it so happened that the subway companies charged rentals for wires in some cases that were put in there by their competitors? A. Whoever was in the subway had to pay rentals.

Q. If there was a competitor that competitor had to sometimes fight for permission to get into the ducts? A. There were companies claiming to have the right to get into the ducts that the subway companies rejected.

Q. Well, the companies owning those ducts which were put in by the city authorities claimed the right at times to exclude people who wanted to use the ducts, is that true? A. Yes.

Q. I remember such a case because it developed in an investigation — a case in which the father of the present Civil Service Commissioner, Darwin R. James, Sr., was interested in such a company and my developing the facts in the investigation led to his being allowed to go into the ducts. That is why I remember it. And then these companies charged a rental, which is a rental which would have to be paid by any one going into the ducts. There was considerable difficulty, was there not, about the charges that were going to be made? A. Yes, the charges were at one time said to be excessive. The Commissioners had the power to regulate the rentals.

Q. I wanted to bring out at this time that these companies controlled the situation, companies that had the telegraph and telephone franchises also controlled the ducts through authority given them by the city and they had the first say about who should go into them and the first say about the rentals. A. The city had the first say as to who should go into them and the company made its objections to the company applying and the company was left to its remedy, to mandamus, to get in, but the contract is clear and explicit that only those that were duly authorized could go into the subway.

Q. And at the same time that you began to investigate had this company, apparently on their own returns, made as much as ten per cent in any year? A. Not on the returns.

Q. Mr. Burr, they were returning profits less than ten per cent, the result of which action was that all those profits went to them and the city got nothing? A. Yes. Because they charged against the city; for instance, they would raise money by a discount of a

bond. The first mortgage was discounted at 90, the second at 60 and the discount charged amounted to over a million dollars to the city. Then they charged for patents \$725,000 which they had represented they possessed. Then they charged the par value of the stock for which they paid for construction, and the stock was practically valueless, against the city and then they charged further percentages with sub-contractors, and that was a system which if continued would never have permitted the city to earn a cent.

Q. Further than that, Mr. Burr, is not it a fact that these companies extended their structure underground beyond their apparent needs? A. Well, at times they were required so to do and that is a viciousness in the situation, because, for instance, the borough president might say, "Now, we don't want to have that torn up, so if you are going to put the subways along there, put them along there." And they were drawing ten per cent on that.

Q. It was drawn to my attention that when the company had profits apparently accumulating that might bring them up to a point where they had to give some of it to the city they blew into construction, which they did not actually need and which, when they put it underground, increased the burden of the city? A. Yes.

Q. It was those conditions that induced you and your associates to get control of the subways for the city? A. To get an accounting and to have the judicial determinations that they had failed to carry out their contracts.

Q. What was the result of the examinations? A. I will read the prayer that succeeded the judgment. [For prayer see index.]

Q. Then your investigation led to the bringing of the action of the prayer of which you just read? A. Yes. Now subsequently it was agreed, the company claiming that the examination made by the Commissioner of Accounts was biased and unfair and expressing a desire to show every item of account in their possession or under their control. It was agreed by the city that their books should be examined and Haskins & Sells was selected as the firm to make that examination, and that examination lasted one whole year, and that examination cost \$24,000, of which the

city paid one-half, the idea being that meanwhile three referees having been appointed that if we could get an accounting in that way the city would be in a position then under the sworn testimony of these accountants to see where the inaccuracies were, to see where the fraud was, if any. Now, three referees were appointed, as I have stated, Hamilton Odell, J. Philemon and Adrian H. Joline, Mr. Larkin succeeded him. The referees took an adjournment until the coming in of this report. Now, then, when this report was finished, we then appeared before the referees and the question was as to who was accountable. Remember that they had set up a statute of limitations, they had set up whatever, they had set up everything that was possible to set up against the claim of the city, and having then bound them by this examination I compelled them to offer that as their report on their accounting. That account done, a great point, in my estimation, was accomplished for the city, because it wiped out practically all their defences. When that account was filed in that way, I prepared our objections and filed them with the referees on the 29th day of January, 1909, embracing 125 printed pages. And then I proceeded to offer proof as to the validity of these objections, as to the illegality of the charge for all the patents, for discounts, for interest on deferred payments, for the various other things which are enumerated in these objections. And I was proceeding to finish up that case when I was supplanted by a special counsel that was employed by the then Corporation Counsel.

Q. Who was the then Corporation Counsel? A. Mr. Watson. Mr. Watson said he was too busy — indeed, I was very busy — to go on at the same time, but in the report which I made at that time dated March 11, 1910 —

Senator Thompson.— Do you mean you were too busy in this case? A. That was my case. I was just about closing it. I was to close it at the next hearing, and it was ready to be closed.

Mr. Moss.— In what year? A. 1910, and in our judgment I had made out our case. I will quote one or two things from the memo report which I made at that time and which report is incorporated and on file with the Board of Estimate, and all of

which was sent to the Board of Estimate on May 8, 1911, showing the then status of that litigation.

Mr. Burr.—I said I have read the memo in regard to said memorandum sent to me by the Corporation Counsel. The memorandum conveys the impression that no beneficial progress has been made. Such is not the fact. This litigation is one of a most involved and intricate character. It has moved slowly. What was despaired of as hopeless we have already accomplished. We have compelled these companies to realize that such obligations must be met by the allowance of millions of dollars to the credit of the city. I believe we have successfully traversed what in 1890 Elihu Root despairingly described in speaking of these companies as the long and difficult and perhaps impassable pathway of obtaining.

Q. Who was this special counsel that supplanted you? A. William Harmon Black.

Q. He has been supplanted? A. He continued for four years where I left off and at the end of that time I was placed again in charge of the litigation, and by that time the referees had requested the company to supply information in fifty-five different instances where the Board of Referees no proper information had been furnished by the company, and that having been attempted, to be done by the company, in March, 1914, I submitted an elaborate brief and data showing where they had failed to do that.

Q. How long did you stay with the case then? A. Until I resigned in May, 1914.

Q. You had it only a short time? A. Yes. Meanwhile offers of settlement had been made to me, which are attached to this report, of over a million dollars and a half reduction in the cost of construction and one million dollars reduction in the deficiency which they alleged against the city by reason of the non-payment of this ten per cent. I turned the matter over to Mr. Black. I had an assistant, Mr. Arthur P. Walker, who is still in this litigation for the city, and I asked him to give Mr. Black the same assistance which he had given me, and I would like to read this letter into the record which I received from this colleague April 11, 1910.

“William D. Burr, Esq.:

“Dear Mr. Burr.—I have your letter of the 4th inst., and it is with extreme regret that I learn that you are no longer to conduct the electric subway litigation. A few months ago your separation from the cases would, it seems to me, have been fatal, but now in view of the splendid shape in which you have them, I am confident we will be able in a short time to bring them to the successful termination planned by you. You certainly deserve the greatest credit for the incomparable way in which you overcome the insurmountable obstacles, and it is most regrettable that owing to the complex nature, either in looking back over the ground you have covered it is very apparent that when you secured consent to the examination of their books by accountants, both cases were practically won. You have indeed added to the city's debt of gratitude to you by making possible that the company would concede many millions of dollars to the city and in addition pay annually five per cent of the gross earnings.”

But when I dropped out of the case there was no call for settlement. The case has been decided within the past few days by the referees and I am very glad to be able to tell you that those objections which I find way back in 1910 were sustained and that where the company claimed the cost of construction to be \$12,388,519.19, the referee allowed up to December 31, 1906, which was the period they were considering, \$9,007,610.34, or cutting off in favor of the city \$3,380,889.85 for the cost of construction as claimed by the company, and the company claimed a difference against the city of \$7,067,832.62, and the referees have reduced that deficiency to \$1,336,030.66; in other words, have made a reduction of \$5,728,096 and awarded in favor of the city \$185,136.89.

By Mr. Moss:

Q. Now which company is the defendant in that action? A. The Consolidated Telegraph Company.

Q. I understand from Rosenson the other day that an action will be started against the other company. That action has been

pending but has never been tried, because under the terms of the contract made in 1891, whenever for any reason the cost of the construction of the conduits was to be ascertained, the cost found was to travel into that part of the conduits which was taken over by the Empire Company. So this determination having been found, it is up to the city to proceed with the trial of that case.

Mr. Moss.— That is a very large result, but has there been at any time an apparent disposition — what about the recapture clause? A. Referees have decided that they were not fraudulent, that these statements were inaccurate, and they have held that to forfeit or to create forfeiture would be too gradual and they have held that since this suit was brought that the companies have been building the conduits in subways under the supervision of the city and that it would be unfair to forfeit those contracts, and they find that —

Q. The city has created a sort of stop against forfeiture? A. Yes.

Senator Thompson.— Referees do hold in favor of the company that the city can't recover.

Mr. Burr.— I believe this is the last litigation that Hamilton Odell will ever be interested in.

Mr. Moss.— He has grown old in this case; there is no doubt about it. He has had the information a good many years.

Q. See, Mr. Chairman, how difficult the recapture clause is. So many circumstances come in and yet the fact that the city has dealt with this company that they claim had defrauded it, because it had a monopoly of the streets —

Senator Thompson.— That is what the recapture in the subway amounts to already.

Mr. Moss.— It will always be considered, Mr. Chairman, a drastic remedy in whatever case the recapture clause is moved against the company. It will always look drastic.

Mr. Burr.— As the referees say, the law abhors the forfeiture. There was never a case where it was more apparent than here.

Because the contracts that were made were illegal — they had to be authorized by the Legislature — it was held by the court that they had no authority to make the contract, and in the law —

Mr. Moss.— Was it not found that books had been destroyed in this case? A. It was not found to be so.

Senator Thompson.— They are getting a great deal more of abhorrence to the forfeiture than there is on the abhorrence of the law to a monopoly. Now, Mr. Burr, I understand that in operating these subways (did you go into that?) in operating these conduits that the rentals charged in reality over the cost of the operation, the actual cost of operation, showed probably more than ten per cent, but that the company had organized a company for repair and another for maintenance and repair when as a matter of fact the actual cost was only about a dollar a month, and that was what ate up the profits and got it up to ten per cent.

Mr. Burr.— I don't know about that; but there has been a contention on the part of the city that the cost of maintenance and the cost of repairs were excessive, and a study was made of the situation by the representatives of the city, both of the finance department and of the Commissioners of Accounts, and one is contained in the report on the Commission on new sources of city revenue January 11, 1913, in which it undertakes to show how these charges are excessive and how they could be reduced, and how under that clause of contract the city would operate by municipal ownership these subways to great advantage. Mr. Hayward made a special study of that situation, which he reported to me in 1914, and he has the figures at his finger ends, and if you would like to examine them, he will come.

Senator Thompson.— Does that show that there was one or more subsidiary companies? A. The case shows that, but referees have wiped those subsidiary companies out, all except one, 15 per cent.

Mr. Moss.— If the court could find a remedy for the city to capture it, this would be the case to do so. Is that your opinion? A. Yes. The only complication with regard to this case is, as I said, we were going over it since 1906, and since that the city

has been organized. New conduits had to be constructed. It would seem to be inevitable to forfeit the conduits which were now being constructed by these companies. If the construction had ended absolutely in 1906, and these facts were shown, proved and demonstrated, then the forfeiture of the system might be completed.

Mr. Burr.—Did it ever occur to you that this system which allows interested companies to monopolize the streets and to have practical hold upon the wires, even of their competitors; that the situation is anomalous; that that is something that the city ought to keep to itself, to be sure? If it were possible under this action, making any provision for those companies' rights, to get the title back into the city, great public interests would be served in doing it. The city always has the right to get control of these subways if it had the money to buy it, but first it was necessary to ascertain what was the cost of construction. Can the city take those subways now without proving fraud? A. Yes. And these reports that I have referred to show how that may be done to advantage.

Senator Thompson.—They can take it on payment of a sum which will equal ten per cent up to the time of recapture? A. Yes.

Q. Now, they had, according to their books, claimed that they had not received ten per cent any year; that was their claim. A. That was right.

Q. And their investment was so large that if they increased the expenses by the creation of other companies to handle the work at more than the cost that would make the burden on the city at the time of recapture much the greater. Was that the situation? A. I did not get that.

Q. I said the larger the cost of construction the more the city would have to pay out at the time of recapture. A. Yes.

Mr. Moss.—The city's burden was constantly growing according to their methods? A. Yes.

Mr. Moss.—Now, about this Riverside Drive improvement. You had some relation to that, did you not? Can you give the names of the subsidiary companies?

Mr. Burr.— You can get a copy of the opinion of the referees.

Senator Thompson. Records in relation to this can be obtained at the corporation counsel' s office. Have they ever passed upon these findings of facts? A. Yes, they have. I have here a number of them. The report of the referees embraces four hundred forty-one folios of facts.

Mr. Burr.— Now, the Hudson River Railroad Company was incorporated under Act 216 under the Laws of 1846, which entitled that company to build a railroad from Albany to the city of New York, commencing in the city of New York, with the consent of the city. The company applied for leave to construct in the city and the application was referred to a committee of the common council, and that committee reported on April 26th, 1847. The special committee to whom was referred the annex of the Hudson River Railroad Company respectfully report that in view of the importance of this great enterprise to the welfare of the city, your committee have been induced to examine it with care. Under the belief that every possible facility should be extended by the common council to enable the company to extend their road into the city, not inconsistent with the rights of individuals and the permanent interests of the city. In view of these facts, and looking carefully to all the interests of the city, the committee recommends for the adoption of the following ordinance. I will not read the ordinance, but I will point out some few things that it contains.

The ordinance gave the city's permission to construct a double track of rails with suitable turnouts along the line of the Hudson river to Spuyten Duyvil creek, near 68th street, occupying so much of Twelfth avenue as lies along the shore. Then through the middle of Eleventh avenue to about 32nd street, thence on a curve across to Tenth avenue, then through the middle of Tenth avenue through West street and then through Canal street. The company is to execute an agreement and that agreement must provide that they shall lay their rails or tracks in such manner as to cause no unnecessary impediment to the common use of the street for all other purposes and so as to leave all the watercourses free. It shall be especially incumbent on the said Hudson River Company at their own cost to construct stone bridges across the streets

required to be arched or bridged whenever the same shall be necessary for public convenience, and also to make such excavations as the common council may deem necessary to render passage over the railroads and embankments at the cross streets easy for all purposes. And the said company shall be at all times subject to such regulation with reference to public travel through such streets and avenues as are affected by the said railroads as the common council shall direct.

Now, immediately after the railroad obtained the right under that ordinance and executed the agreement to which reference is made, and laid its rails, a public clamor immediately arose against the operation of this road. And the first case is contained in 1849 — *Drake vs. The New York Central and Hudson River Railroad*. And in that case the presiding judge, Judge Jones, said, in answer to the complaints of the citizens, and denying their application for injunction: "The corporation of the city of New York, with a potential care and regard to the rights and interests of the citizens, have passed an ordinance for the government and regulation of this railroad in the use of the streets wherein they are permitted to locate the same, to which the company are bound and may be compelled to conform to the corporation of the city of New York. Application for relief against abuses of the privileges the defendants may enjoy, may at all times be made; and by that body all existing grievances, all future grievances, all grounds of complaints, capable of remedy or redress, may and we trust always will receive early attention, and the proper remedies be promptly applied."

And that seems to be true to-day as it was at that time; but we must look to the city government to enforce the obligations and duties of the company.

That situation has been in the courts, as I say, from 1849 up to the present time, the last case being the "216 New York." At one time this road ran down to Chambers street; it ran to the corner of Warren street and Broadway; it ran passenger cars to Chambers street. The old Harlem Railroad, which was incorporated in 1831, also ran down Fourth avenue; but public opinion compelled, from time to time, these tracks to be removed as the city grew more populated. In 1845 —

Mr. Moss.— We used to steal rides on those cars down Fourth avenue.

Mr. Burr.— Less than 500,000 people were down there. To-day there are over 2,000,000 — which presents an entirely different situation. At other times the cars were moved by mules and horses down Eleventh avenue; but, though the people complained, no real effort outside of many of the remonstrances by various committees of the common council, was ever made to remedy this evil until the passage of “ 109,” known as the Saks law, and that provided that a subway should be built, that these tracks should be put into the subway, and empowered the railroad commissioners and the city authorities to enter into an agreement for the relocation of the tracks and if within a year after the passage of the act no agreement was made, that then the city had the power to contest this agreement. That was a drastic remedy.

Q. Do you know of any litigation in connection with this act?

A. Yes, I do. And by that act it was made the duty of the Public Service Commission, succeeding the old railroad board, to prepare plans and so forth, and maps, and in the event of the failure of the city and the commissioners to come to an agreement to direct the corporation counsel to take proceedings for the condemnation of its franchise. They did so. They prepared those maps and they did direct the corporation counsel to bring the proceedings to condemn them. But when that was referred to me I found that the conditions precedent necessary had never been done, and when a taxpayer named Helen Jerr petitioned to begin proceedings, we went in the courts and facts were presented to Justice Gerard and he felt rather hot about the matter — that the corporation counsel had apparently put him in obstruction in the way of condemnation. But he concluded that the corporation counsel was right and I will read you a brief extract from his opinion, which appeared in the Law Journal of December 22nd, 1908. He says:

“ There is no conflict as to the facts of this case. It seems that the old Board of Rapid Transit Commissioners never obeyed this law. They prepared a plan, but this did not provide for a subway in detail. The proposed plan provided that south of 60th street there should be a subway, but from

60th street to Spuyten Duyvil, except at certain portions where the tracks of the railroad, and so forth. The fault lies with the old Board of Rapid Transit Commissioners or the corporation counsel. The old Board of Rapid Transit Commissioners failed to take either the proper steps, not having been taken, are wanting."

And therefore that fell through.

Now then, the agitation continued because this remedial legislation is not primarily for the purpose of extending the facilities of the New York Central Railroad, but it is primarily to remove a grievance and to compel the railroad to abolish the operation which the railroad had made in the public streets of New York, because such operation had proved a menace to safety. That being made manifest by the number of people who were injured, the Board of Estimate took up the matter and they sent it to the corporation counsel to investigate, to find out whether the franchise of the New York Central Railroad Company was a valid franchise or not, and that is how the matter came to me. I investigated the matter from the beginning and as I have stated, the original consent for the operation of this railroad was for fifty years, and the charter of life of the Hudson River Railroad Company, I think, it never had extended its existence and its charter would expire in 1896. But in 1869 an act was passed apparently for this purpose, permitting the railroads to consolidate their franchise and all their property, and a consolidation was had between the New York Central, operating from Buffalo to Albany, and the Hudson River Railroad Company, operating from Albany to New York. That consolidation was the result of an investigation made by the Legislature of 1867 as to the great charges that had been made to increase the freight rates; and Mr. Clark, the son-in-law of old Commodore Vanderbilt, being examined as to the cause of such extravagant rates, said that it cost more to ship a ton of freight from Spuyten Duyvil to St. John's Park than it did from Albany to New York. Well, to make a long story short, in that opinion I held that —

Mr. Moss.— Spuyten Duyvil is the northern extremity of Manhattan Island and St. John's Park is at the lower part of Manhattan.

Mr. Burr.—I would like to say that the population of New York in 1845 was 371,223; in 1900, 1,850,073; in 1916, 2,925,761. And the population of the whole of the city at that time, 5,253,885. And the number killed, as it was shown by our investigation, on the road, was 437, and injured 11,073 at the time of the trial.

By Mr. Moss:

Q. In what length of time? A. So far as they ever kept any record of it.

Q. And in what territory? A. From Spuyten Duyvil to St. John's Park. So I said that there was a doubt as to whether the franchise limited for fifty years could be extended for five hundred years by a board of gentlemen sitting down and determining upon a consolidation, where in the beginning the consent of the city was necessary for the fifty years. This would apparently enable these gentlemen to extend that consent for five hundred years. And they recommended that drastic action be taken; and I recommended that they order the removal of the tracks. The borough president gave notice to the railroad and the railroad began proceedings to restrain the city from taking such action.

Q. Where were the tracks you wanted to have removed? A. Wherever they were operated on the streets of the city. I would like to give you the figures and the dates. The opinion of the corporation counsel was rendered on May 28, 1909. The resolution of the Board of Estimate was made on the same date. On June 18, 1909, the action was started by the railroad company restraining the city. On November 4, 1909, the issues having been joined, an order of reference was made. November 17, 1909, the reference begun. March 1, 1910, the referee made his report. March 30, 1910, judgment was entered. April 9, 1910, an appeal was taken to the Appellate Division. February 12, 1911, the judgment was affirmed by the Appellate Division and the appeal was then taken to the Court of Appeals. I appeared before them and asked that the cause be preferred. It was preferred and was decided on May 20, 1911, by the Court of Appeals on different grounds. The Court of Appeals held that the franchise was not limited to fifty years in its inception, that it was perpetual

from its inception. The courts below held that it was. The decision may be found in 202 New York at 212.

Now, in that case the company attempted to prove its title to various lands under water extending from Spuyten Duyvil to 72d street; but in the determination of the case the referee ignored the requests of the city to find as to those matters of the lands under water, and that being ignored by the referee was ignored by the courts above, and it never was decided. But in the very illuminating opinion of Judge Cullen it was pointed out clearly that whereas the city did not have the authority to remove the tracks from the streets, that in view of it being detrimental to the city, that the State might compel the removal of the tracks by the company at its own expense, as was subsequently affirmed in the Minnesota case, because Judge Day said there that the police power is the highest authority and it can't be given away, no administration can divest another administration of the exercise of that power, and so the exercise of that power varies as you see by the history of the Harlem Railroad, that in one year it was required to sink its tracks, and in 1892 it was compelled to elevate its tracks; so this is a peculiar city, and so when you undertake to provide for the future you have to take that into consideration.

Senator Thompson.—Do you think that ought to be taken into consideration in making a dual subway contract?

Mr. Burr.—You are still harping on that. The result of that decision was the passage of the act in 1902, by an act which provided —

Q. Who drew that law? A. It was drawn by many hands, some in the corporation counsel's office, some in the mayor's office. And I was very insistent that nothing that was done under that law should affect the question of the validity of the franchise of the company which was then being tested. And under that law the railroad was required to submit to the Board of Estimate before the first of October of that year plans for the relocation of these tracks at its own expense so as to obviate this condition of rail operation, and authorized the board to enter into an agreement with the railroad company whereby additional facilities and

enlarged plans might be agreed upon, given increased powers to deal with the situation.

Q. Did that give the city power to compel the railroad to do anything? A. It was nothing mandatory about it because there was a great abhorrence of mandatory legislation. Under that act then the Board of Estimate appointed a committee to take up the matter. That committee was headed by the then president of the Board of Aldermen, now the mayor of the city. And plans were presented and finally a question was raised with regard to these lands under water, and hearing was had and that again came to me to dispose of it, and I did dispose of the matter and wrote an opinion. And it seems that this situation as outlined in that opinion had not been taken into consideration and the plan as then proposed fell flat.

Q. Did Mr. Mitchel — rather, did the committee of which Mr. Mitchel was chairman — hold the matter about a year and a half? A. Yes.

Q. And was the railroad filling in during that time? A. That I could not tell you, Mr. Moss; but I can give you the date when it finally made its report. The matter came to that board in 1911. It was with that board until March 27, 1913, when it made its report. It had a public opinion on May 28, 1913. And then the question was raised also at that point as to whether the act was constitutional or not authorizing the city to give this company increased facilities by way of trackage. I will read the conclusion which I arrived at at that time. My conclusions said, in the opinion of June 24, 1913; my conclusion may be stated as follows:

First, by the decision of the Court of Appeals, the New York Central and Hudson River Railroad Company against the City of New York, the right of the New York Central and Hudson River Railroad Company to operate its railroad under the consent originally granted by the city along the streets and avenues occupied by its tracks was recognized. Such right cannot now be questioned by the city.

Second, the city owns the fee of Twelfth avenue, subject to the use of the company for railroad purposes, as lies within its right of way.

Third, I believe chapter 714, giving the railroad company the right to build a wall from 60th to 72d street, would have been declared unconstitutional by the courts if the city had been diligent to assert such claims. The sense of and reliance of the law as valid, and the city raises a doubt in my mind as it stands; therefore it must be recognized. The legislation closed the streets between 60th and 72d streets. The city therefore has no power to compel the making of these streets as against this act. Lands within the lines of these former streets are no longer devoted to public use. Titles held by the city in the same ways; the only way to obtain the street use would be by having the act.

Fourth, where not granted by the city to the upland owner, the record title to the land formerly under water, under the ancient charters and also patent from the State, is vested in the city of New York, subject to the use thereof by the railroad company during its existence. Where granted by the city to the upland owner the title is vested either in such upland owner, subject to the use by the railroad company during its corporate existence by reason of the deeds from the upland owner. The company entered into the occupation of such land under a license from the city, and it has not acquired any title as against the city by adverse possession.

And then as to the power of the Board of Estimate under the act to grant these increased facilities to the company I said:

“I am of the opinion therefore that this act does not offend against the Constitution, inhibiting against the enactment of any private or local bill of the Legislature granting to any private corporation, association or individual any exclusive community or franchise whatever; the act provides that plans are to be submitted and agreed upon between the city and the company, the said plans being such as may be necessary or required to abolish, discontinue and avoid the new set grade for railroad purposes of streets, avenues, etc. What is or is not necessary or required to be done is a matter to be determined by the Board of Estimate and Apportionment. The railroad needs certain things to be done for which it is willing to pay liberally. The first question to be

determined is whether the city by it could or to any extent whatever, no matter what might be the compensation derived by the city therefrom."

And then I quoted from the then recent decision against the Realty Company, in which the judge says that where these officers exercise their discretion, and they have the right to exercise it, that the court will not interpose its discretion, as it is up to the board. I said:

"The fundamental chapter, Laws of 1907, 'As are at the same elevation within any given area.' As to this the provisions of the act are mandatory. Its provisions, etc., are not mandatory. I am of the opinion that under the act, chapter 777 of the Laws of 1911, the Board of Estimate has the power to make an agreement such as is proposed, etc., as to the wisdom, justice of propriety of such action, viewed from the standpoint of the city's best interest. The Board of Estimate are the sole judges; it is up to them."

By Mr. Moss:

Q. You said that fell flat? A. I said at that time the plan as proposed fell flat. Now, then, the matter was then taken up by that committee in the light of all this information. And here recently, as you know, a new plan was presented which was dated April 22d, 1916, and an explanation of the former plan dated May 12th, 1916.

Q. Is that the plan date or the report date? A. The report date. Now, that is about all that I have to say as to the history of this litigation and as to its present status. That there is room for dispute as to the merits of this plan now proposed, which I understand is proposed as a counter-plan by the city, is quite apparent. There have been many reports on this subject. I will not go any further back than March, 1911; E. P. Goodrich and Harry P. Dickens made a report upon the elimination of the surface freight and railroad tracks of the New York Central and Hudson River Railroad. Mr. Goodrich is one of the engineers connected with the present plan. This report presents a plan — I quote, "Whereby surface tracks would be abolished in six months without detriment to the shippers."

Mr. Moss.— I will take up that phase of the matter with Mr. Craig.

Mr. Burr.— I want to say further that this is a great elimination matter, practically, though it is identically — It affords an opportunity for the city to better its situation with regard to the railroad and the railroad to better its situation with regard to the city.

Mr. Moss.— That is, it is being handled in a way that will be mutually beneficial, but it must not be hogged on one side. A. Exactly.

I am quite satisfied that the railroad people are desirous of settling this matter so it may be done permanently, not to have the police power again exercised against them and if they are wise, they will do it.

I see in the report one of the objections. It says, "Moreover the cost of the suggested tunnel is prohibitive, particularly as it is not materially benefitting financially by the change." Well, they do these things somewhat better, and they take the firmer and more comprehensive grasp in the west. For instance, where it was necessary for the people of Chicago to save their lake front, the cost was not considered prohibitive. I understand they put a tunnel through Riverside Drive to cost about \$12,000,000. I am not expressing any opinion as an engineer, but we all know that that is the most beautiful waterfront in the city of New York, and it ought to be preserved, and if it is feasible to put through a tunnel as an engineering proposition at a cost of \$10,000,000, that should not be prohibitive. But the railroads were compelled in the city of Chicago under the ordinances which were passed requiring them to eliminate their grade crossings and to elevate their tracks; under these ordinances the railroad pays the entire cost of construction; the total estimated expense to the city under the track elevation ordinances will amount only to about one per cent of the expense, and up to 1909 they had spent for that purpose, the railroads had spent for that purpose, \$72,822,000, and it is stated further in the report that 148 miles of road already covered by track elevation ordinances is approximately 44 per cent of the total mileage. It

is estimated that the ultimate cost to the railroads of the track elevation will approximate one hundred fifty million of dollars.

Q. Are you willing to state the circumstances, that you have withdrawn from the city's service? A. No, I don't care to discuss it.

Testimony of Charles L. Craig. Mr. CRAIG is sworn and takes the stand.

Q. Mr. Craig, you are a lawyer, and counsel for some of the association of property owners and residents in the neighborhood of this proposed improvement, are you? A. Yes.

Q. And are you able to state the point of view of the objectors? A. I think so.

Q. Well, if you will make a succinct statement of the objections of all the objectors, we will be obliged to you. A. First, I may say as a general objection, there is a general objection, and that is that any plan should be adopted without investigation of all of the facts, property rights, franchise rights, and waterfront rights, under conditions where the power of subpoena could be exercised to compel the production of evidence. In other words, the Board of Estimate under this Act of 1911 has no power of compulsion whatever. Under the Act of 1911 the Board of Estimate has no power of compulsory examination — in fact, no power of compulsion of any kind, so that whatever information that board or any of its committees has, is purely the voluntary information that is furnished to it by the railroad or of whomsoever it may inquire. The effect of that is that if the railroads should say that it needs the entire waterfront of the west side of New York, the Board of Estimate and Apportionment has no way of meeting that claim. Now if you will contrast to that the powers of the Public Service Commission, where matters of this kind are determined, after an inquiry, where the claims of the various parties, the railroad, the city, the property owners, the shippers are heard and examined in it, and a conclusion reached in the light of that kind of an examination, you will see the difference between a proper disposition of it in an intelligent way and the way the Board of Estimate has attempted to deal with it under this Act of 1911, without any power of compulsion of any kind.

Mr. Moss.—How can the Public Service Commission lose jurisdiction? A. Under the Act of 1911; the last section of that contains a provision that all others acts, including the New York Charter, are deemed inapplicable. Now the construction placed upon the part of the Act of 1911 by the Board of Estimate is that all acts are inconsistent, particularly those conferring power to the Public Service Commission, has any applicability whatever. As your chairman will doubtless recollect, from proceedings before one of his Committee a little over a year, there has been an active opposition to any legislation which would empower the Public Service Commission to conduct an inquiry whereby the various claims could be brought to a showdown and disposed of on that basis.

Q. What influences have been against the Public Service Commission's power? A. I don't know of any except the railroads, and the Board of Estimate and Apportionment.

Senator Thompson.—I suppose you remember the Ellenbogen-Bennett bill that was before the Committee at that time — Mr. R. A. C. Smith voiced the opposition, representing the city; opposition also by the New York Central Railroad. The act was championed by its introducers and by members of the City Club, I guess, and I think the West End Association.

Mr. Craig.—It did not champion the act, and it was because we were stated to have supported it we were drawn into the situation. And at request, the West End Association prepared an act which would place the whole thing under the jurisdiction of the Public Service Commission; that was modeled under what is known as the Buffalo Act of 1911. Under those acts the Buffalo Terminal Commission Act, the Legislature appointed a special commission, consisting in part of officials of the city of Buffalo, and required the railroads affected to submit their plans to that Commission, required any objectors to file their objections, required the taking of testimony by whosoever it might be offered with respect to the merits of any plan or objection, and after everybody had been heard in the fullest possible manner, that the Commission was then empowered to adopt a plan of their own which should be

absolutely conclusive upon the railroads and the property owners in the city of Buffalo.

Senator Thompson.—That Act of 1915 passed the Assembly and it was reported by the Senate. In 1915 the city did not appear in opposition; the act passed both houses and went to the mayor and he vetoed it.

Mr. Craig.—Now there are certain fundamental objections to the plan which have been brought forward by the terminal committee of the Board of Estimate under this report referred to by Mr. Burr, dated the 22d of April, 1916. Some of those objections survive from the report which was rejected in 1915, which Mr. Burr referred to also.

Now, one of the first criticisms we have had to make of the terminal committee's report of 1916 is that it has been presented to the public by the authority of that committee and by that terminal committee itself, in a misleading light. I think I might be justified in saying that it has been falsely presented.

Now, to give you an illustration: At the time the terminal committee made its report, it gave out to the newspapers a summary statement as to the contents of the report and the effect of the plans, and it also gave pictures illustrating how these plans would operate, and I will show you, Mr. Chairman, a copy of the New York Times for April 22d, 1916, on page four, where some of those pictures were published, and you will see here one picture which looks south towards Grant's Tomb and shows Riverside Park over a tunneled railroad down to the water's edge. Now as a matter of fact there is not a particle of foundation in the plans for any such picture as that. And the statement was also made and published in the Times, and I call your attention to it here, about the fourth column, that "As a part of the settlement the railroad company agrees to pay a sum sufficient to restore the park to the edge of the water." Now, there is not a word of truth in that statement.

By Mr. Moss:

Q. Who signed that report? A. I have here the report of the port and terminal committee, which is signed by the members of that committee. The newspaper quotation does not correctly state

even the contents of the report, but the New York Times has charged the terminal committee with responsibility for the matter furnished to it.

Q. You mean on inquiry they find that — A. This report is signed by William A. Prendergast, comptroller, chairman; Marcus M. Marks, borough president; Lewis H. Townes, as president of the borough of Brooklyn, and R. A. Smith, commissioner of docks. I have been informed by Mr. Marks that he had nothing to do with furnishing newspaper pictures and had nothing to do with that.

Senator Thompson.— I talked to Mr. Marks and he said he did not agree with the report, and that he signed it for the purpose of getting it before the Board of Estimate, and when it came before them, the public hearings were declared on the report, but not upon the plans. The Board of Estimate therefore was in a position of giving a hearing without a possible time of the facts being before the board, on which the hearing was held. He now, however, by getting this report, had an understanding that a complete hearing would be had on the plans and on everything and that the public would understand the whole matter and for that reason he thought it would be properly handled by the Board of Estimate.

By Mr. Moss:

Q. When did he say that? A. This was about two weeks ago, I should think.

Q. Mr. Craig, has there been a hearing in the board on the plans? A. Mr. Moss, we had the greatest possible difficulty in getting an opportunity to examine these plans so we could get a hearing, and we were finally held down to one week in which my own committee was to report to the West End Association, action should be taken by that association, so we could have a hearing before the Board of Estimate.

Senator Thompson.— Has not there been a hearing before the Board of Estimate? A. There has been a hearing, and that hearing has not been closed.

Senator Thompson.— President Marks was not in favor of that report.

By Mr. Moss:

Q. Who do you mean by "they"? A. I mean the Board of Estimate and Apportionment. If you will bear in mind, Mr. Chairman, these original plans consist of forty-four sheets, they are about two feet wide and about five feet long, and they are full of engineers' drawings, and those plans originally were not available, except a copy on file in the Board of Estimate and Apportionment, and a copy on file in the Grand Central Terminal, and to those two sets of plans the city of New York had to have access and make up their minds on that short notice. The hearings that followed were the result of the contentions put forward by the West End Association.

Q. Do you know of any plan to jam this through, this matter through, this week? A. I have not heard of any statement to that effect. Now, Mr. Chairman, we had a struggle, running over a week or ten days with the Board of Estimate for a set of full-sized plans, because we refused to proceed unless a full-sized set was furnished. Now, if you will realize that if you put ten minutes each on each of these, it is absolutely impossible to ascertain the contents of these plans by going to the Board of Estimate. Now, by the time the full-sized plans were filed, the Board of Estimate had a small, reduced size lithographed set made of those plans, which was furnished to some of the newspapers and furnished to the public. That lithographed set, however, did not include twelve of the most important sheets in the plans—namely, the so-called land maps, which showed the grants of land under water which were being made by the city to the railroad, showed the extent of park territory that was to be torn up and used by the railroad company, and which showed the purchase by the city of New York of the railroad surface franchise below 59th street.

Senator Thompson.—Who gave out the information? A. The terminal committee furnished an abbreviated set of plans, omitting those maps.

Q. Who had charge of that? A. Prendergast. Now, as a result of the criticism directed against that *modus operandi* of the West End Association, the terminal committee, under compulsion,

did make another reproduction on a small scale in which they did include the land maps which had been omitted from the earlier plans. I have one of those here which I am willing to leave with the Committee so that you may examine them at your leisure. These plans have only been available with these colored land maps for about two weeks.

Now, the one difficulty in handling the reduced maps is that they are not drawn to a scale—that is, you can't scale them in any way so as to check up the distances or the measurements with any degree of certainty. The thing that immediately strikes anyone upon an examination of these complete plans, and the comparison of their requirements with the report made by the terminal committee, the Board of Estimate, is that there is absolute conflict of statement in the terminal committee's report. Statements are made in that report which are absolutely without any foundation whatever in these plans. Now, when it is borne in mind that the railroad acquires its rights according to the plans, you see how important it is that the public should know the contents of these plans and should not be lulled into a false sense of security by a report which misstates the contents of the plans. Now, as an illustration—

Q. Does anybody believe that Mr. Prendergast would misstate anything? He said he was engaged in a campaign of education.

Senator Thompson.—He educated us, yes.

Mr. Craig.—Now, on page 28 of the terminal committee's report, the statement is made that, "These advantages will be secured to the city of New York without the expenditure of city funds and without the surrender of any of the city's waterfront to the exclusive use of the railroad company." I imagine that the residents of Washington Heights now feel that there is some degree of irony in that, because they have received notice within the last few days of a liability for a heavy assessment to acquire Inwood Hill, the fringe of it, for a public park, the purpose of that so-called park being to straighten the railroad's right of way and giving it a better crossing over the ship canal.

Q. Who is responsible for that parking? Who is responsible for starting out to make Inwood Hill a park? A. The Board of

Estimate; but it is connected with the railroad plan under this Act of 1911. Now, for example —

Q. Who is the chairman of the Board of Estimate and Apportionment? A. Mayor Mitchel is the chairman. Now, in the 1913 report —

Q. I notice that education and truth are not always synonymous. A. Now, the statement there made by the terminal committee on that page 28, was that this would be done without the expenditure of city funds, etc. Now, before the plans can be carried into effect, the city must acquire a strip of land along Inwood Hill as a public park, in order to give to the railroad the new right of way which the committee's report provides.

Now, if you will look here, Mr. Chairman, at sheet 38 of this report, being one of the land maps, you will see a long, straight yellow streak running from Dyckman street up to the Ship canal; then outside of that you will see a curved line which represents the railroads present right of way. And in this yellow streak the city is to give the railroad a new right of way, what they call a "sub-surface easement"—the city buys from the railroad its old right of way for \$122,677, and it grants to the railroads the new right of way, those rights for \$19,511. Now, if you refer to the terminal committee's report of 1911, you get a sidelight on this park. Now, in the report made by Mr. Mitchel on the 24th of March, 1913, as chairman of the then terminal committee, this statement appeared: "At Inwood Hill the company does not at present hold the fee of a strip of land wide enough to permit the construction of a four-tracked main line." Now, Mr. Moss, you asked me, a while ago, the origin of the Inwood Park proposition. It rests upon that condition, as there stated by Mr. Mitchel. The so-called park of Inwood Hill does not consist of Inwood Hill, but it consists of a part of it sufficiently wide to make a new right of way, to make a new park there five hundred feet wide at the widest, and that new park, Mr. Chairman, while according to the action taken in the Board of Estimate, includes the lands under water along the front of Inwood Hill, they will have no such effect, because those lands under water are held by the dock department and they cannot be transferred to commercial uses from park uses without an act of the Legislature.

Senator Thompson.—Speaking of park uses — yesterday afternoon, when I was over in Washington Park, the complaint in the letter of the “Citizen” that came in here, was about eighty feet of their park was roped off for the buses, in the children’s playground. Now, before the children’s playground there was a drive and at one side of that there had been posts placed. Now, if there was not any children’s playground in that roadway, there could not be any bus station there at all, and I wondered whether the children’s playground was made in order to fence the eighty feet out to the cars.

Mr. Moss.—It’s evident that somebody lays awake nights figuring these things out.

Senator Thompson.—I don’t know if that is true, but this coming up in this way, the parks being used for railroad purposes, there is not anything there, there is only asphalt street.

Mr. Craig.—And that statement is to be taken in connection with the terminal committee’s report on page 28, that this work is to be done “without the expenditure of city funds,” and in connection with the same statement, the land map, No. 13, shows that the city has obligated itself to give the railroad a right of way or easement, as they call it, from 59th street south to below 42nd street, by the relocation of Twelfth avenue between 51st street and 42nd street. The city can’t keep its contract with the railroad and give the railroad that right of way without the necessary condemnation proceedings to acquire that title from private property owners, because that title is not now in the city of New York. That is a thing that requires the expenditure of city funds and is to be taken in connection with the city’s statement that “these advantages, and so forth. . .” Now, there are certain details in regard to this report. Now, in this same statement, at page 28 of the terminal committee’s report, it was said that “these advantages will be secured to the city of New York without the surrender of any of the city’s waterfront to the exclusive use of the railroad company.” Let me call your attention first that the Act of 1911 requires all the changes that are to be made under these plans to be made at the sole expense of the railroad company, except the roofing through Riverside Park and the roofing through

the Fort Washington Park. Those are the only things that are left for the city to trade with the railroad; all the new rights are to be had and acquired at the sole expense of the railroad company. Now, this statement, on page 28 of the terminal committee's report, was that these advantages will be secured to the city without the expenditure of city funds and without the surrender of any of the city's waterfront to the exclusive use of the railroad company. Now, if you will look at sheet 18, which contains the land map from 59th street north to 72nd street, you will see there three different colors. The yellow represents land under water, owned by the city of New York, which is to be granted in fee to the New York Central Railroad Company; the purple color represents Twelfth avenue and the various cross streets discontinued by the unconstitutional Act of 1887, all of which land is to be conveyed in fee by the city of New York to the New York Central Railroad Company. At the lower end the city also conveys in fee to the railroad, the 59th street pier and all the land and land under water, underneath the pier, so that when you add it all together, the railroad will have an absolute fee to the entire waterfront from 59th street to 72nd street, excepting only a little parcel here at 72nd street to 70th street, where the city proposes sometime to put coal dumps. Now, in other words, you contrast the right actually granted by this land act with the statement of the terminal report, and you will find from the land map that the railroad gets the fee of all the waterfront, whereas in the terminal committee's report the statement is made on page 28 that this work is done without the surrender of any of the city's waterfront, and so forth. And I submit to you, Mr. Chairman, with both reports before you, that there is no way on earth that you can reconcile these two statements.

Mr. Moss.—Do you remember how insistent Dock Commissioner Smith was to hang on to the waterfront there?

Senator Thompson.—Yes.

Mr. Craig.—Now, Mr. Chairman, in connection with the same statement that the city does not part with any of its waterfront to the exclusive use of the railroad company, I call your attention to this.

Now, Mr. Chairman, referring to land map sheet 27, which relates to this, you will find there the same color scheme and the large amount of land under water in yellow, with parts of streets in purple; and that is from 135th street northward to 150th street — are conveyed in purple.

Senator Thompson.— I get the full import of it, because there is not anything better known now than that the ownership of the docking privileges in a city like this has a strong hold on the ports, and you have gone to a whole lot, years here, getting into the city the title to the dockage.

Mr. Craig.— Forty-six years, we have been spending millions to reacquire the water from private ownership.

Senator Thompson.— The idea being to have the city own the entire waterfront so there can be no discrimination in the landing of boats.

Mr. Moss.— Here is a scheme which has been checked by the West End Association; it would have gone through long ago but for the action of this association. Somebody is trying to give that waterfront away to the New York Central Railroad Company and somebody is doing it by a report that is not true and by false pictures printed in the newspapers. Now, I think if Mr. Craig can tell us who is responsible —

Mr. Craig.— The map bears the signature of the terminal and railroad and the report bears the signature of the terminal and the railroad. Now, there is one thing you can't overlook: If it is the policy of the city of New ork to get rid of its waterfront, it ought not to be done by a false statement of the facts and the committee of any public body ought to be permitted to circulate a report containing a statement that certain public works are accomplished "without the surrender, etc.," when the very land map which is the contract itself shows in absolute contradiction to the written statements in the committee's report.

Mr. Moss.— Mr. Craig, have these inaccuracies been called to the mayor of the city of New York? A. They have been called to the entire Board of Estimate and Apportionment. I will say that the mayor absented himself from all the hearings before the

Board of Estimate while these actions were being referred to for public hearing.

Mr. Moss.— People elect the mayor to be the head of the city government, to be the head of the Board of Estimate, and I want to know, have these inaccuracies, which you have testified to, been brought to the attention of the mayor? Has the mayor been informed? A. He has had these reports, they have been filed with the board.

Senator Thompson.— The administration of docks and ferries don't cost the taxpayers of the city of New York anything, but pays a revenue to the city.

Mr. Moss.— Mr. Craig, I still want to get something definite on that proposition. Have these statements concerning the attempt to give this waterfront to the New York Central Railroad been brought to the attention of the mayor in such a way that someone can testify that he is in fault? A. I have not brought them to his personal attention for the reason that he absented himself for two days when the arguments were brought to the attention of that board.

Senator Thompson.— Get a transcript of this record to-morrow and see that it is delivered to the mayor Monday, and that is all we can do.

Mr. Moss.— I don't want to be misunderstood, Mr. Chairman. I don't speak of the mayor, instead of this sense — that he is the head of the administration, so that when a thing of this kind is charged in order that he may accept responsibility before the people of the city.

Mr. Craig.— I may say, Mr. Chairman, that the lands which the city is conveying to the railroad company in fee, the waterfront north of 59th street, are now leased by the railroad from the city, and under those leases the railroad pays the city approximately \$50,000 a year. The city will obtain no revenue from any part of that land if this contract is carried into effect.

Senator Thompson.— They pay no consideration for the fee?

Mr. Craig.—The railroad is required to do everything at its own expense, except at Riverside Park and Fort Washington Park, so that the city is inhibited from standing any part of that expense. They nominally allow the city, for the land under water, \$1,337,015, and for certain street ends along there, partly bulkhead, originally land under water, they allow \$2,421,300; and for the 59th street pier and the land under water under the pier they allow the city \$418,000; but the city gets no money; the railroad make a Panama canal out of Riverside Park and restores a part of the surface of the park after that work is done, and having done that, has discharged its liability to the city.

Senator Thompson.—They are allowing the New York Central Railroad to acquire property that is probably worth as much as the cost of this.

Mr. Craig.—If you will follow this yellow streak by which the grant on land map sheet No. 30, you will see a streak of yellow running northward on the outside of the railroad, from 153rd street to the southern boundary of Fort Washington Park, which represents land under water, the fee of which is to be conveyed by the city of New York to the railroad company; the same condition is continued just north of Fort Washington Park and runs 2300 feet from that point all the way to Dyckman street.

Now, continuing at the Ship canal on land map sheet No. 38, you will see two large parts of yellow, one on the Hudson river and the other on the Ship canal, which are lands under water conveyed in fee by the city of New York to the New York Central Railroad Company. Now, that is the situation that is actually presented to be put into effect by the adoption of these plans, and you have a statement in the terminal committee's report that I have referred to. There is no waterfront left except between Riverside Park and 129th street, and a little bulkhead in the neighborhood of 155th street. There is a great deal of bulkhead that I have not mentioned in various sections along there which is also conveyed.

Mr. Moss.—Mr. Calvin Tompkins said that the city has lost subways, now it should keep its eyes on the water front, for that

is the next thing that will go if somebody does not look out for it.

Mr. Craig.—In this terminal committee's report, in this connection, the statement is made at page 27, referring to the property to be surrendered by the city to the railroad company in these terms, "The major part of which are practically valueless for general civic purposes."

Well, the 59th street pier is now leased to the railroad company at \$14,700 a year. A revenue of \$14,700 is not valueless even to the city of New York. And under the lease of the land under water immediately north of the 59th street pier the railroad pays the city approximately \$45,000, which includes the 59th street pier, however. The valuation placed upon that so-called "valueless" land in the terminal committee's report, is \$418,000 for the 59th street pier, \$1,336,015 for certain land under water north of 59th street \$2,300,000 for — and so forth, and various other sums. But those are the largest sums that go to make up the schedules of lands that are being referred to as being valueless for any city purpose.

Now, in that connection on the money side of the matter, on page 49 of the terminal committee's report is a schedule headed, "Lands and Easements Sold by the Railroad Company to the City of New York," with the sub-heading, "Relinquishing of Surface Easement on Certain Sheets which are Specified." Included in that schedule, that and the continuation of it on the subsequent pages, is an allowance by the city of New York to the railroad company of \$1,775,588, which represents nothing in the way of land, but, as a matter of fact, is the purchase by the city from the railroad company of the railroads and surface franchise granted under the Act of 1846 on Tenth and Eleventh avenues, south of 59th street.

Senator Thompson.—It is the right of the railroad to operate on the public street.

Mr. Craig.—Now that franchise has no value, as you know, Mr. Chairman, for capitalization purposes, and it perishes the instant that the city acquires it. And you will see that franchise

represented here on these different sheets, 4, 6, 10, by the appropriate colors.

Now, there is no provision in the Act of 1911 that authorizes the city of New York to buy any franchise from the New York Central Railroad Company.

Senator Thompson.—Is there any provision authorizing them to buy any of it? A. There is some provision, but nothing about buying a franchise. And I may say, Mr. Chairman, that the whole scheme involved in the terminal committee's report places a very false construction on the Act of 1911. You heard Mr. Burr's testimony that the only purpose of that act was to eliminate grade uses of the railroad, and the city was authorized to make an agreement having that effect. As a matter of fact the principal effect and purpose of this agreement is to confer enormously new and enlarged rights upon the railroad company that are wholly aside from surface operation and, in fact, in many parts of this plan, surface operation is continued, particularly below 30th street in connection with the Twelfth avenue, and that section around there.

Now, there is one other thing here I want to direct your attention to, and that is what they call the Park Treatment Plan, which begins on sheet No. 22. Now, it is almost impossible from this reduced scale map to get the bearings of these lines or their effect; but if you will notice here, you will see that they are divided into two kinds, dotted lines and continuous lines. Now, the dotted lines represent work which may be done sometime in the future by the city of New York. No work indicated by a dotted line is to be done by the New York Central, nor do they assume any liability or furnish any money for doing any such work. Now, an examination of those plans disclose that the whole of Riverside Park, outside of the railroad from 72nd street to 129th street, is dealt with by dotted lines. Now, what that means is this: The railroad only does enough work in Riverside Park to cover over its own tracks, and that leaves outside of the tracks for a distance of three miles a stretch of broken rock filled in there for the purposes of this plan of 1913, which is Riverside Park, but which is left unfinished, an absolutely barren stretch of rock. And which, bear in mind, the statement given to the public, to the New York

Times, was that "As a part of the settlement the railroad company agrees to pay, assume, etc." Page two.

Now, there is not a word of truth in that statement, nor is there in the picture which was furnished to the terminal committee and which had the effect of leading the public to believe that this plan which they were required to attend the public hearing on, required the finishing of the plan down to the water's edge. And it was only because those statements were disclosed that there was any attention to this public hearing of any kind.

Now, I will make that clear: That so far as Riverside Park is concerned the railroad is moved into the park north of 72nd street, its yards are extended, the entire park is cut away from 76th street to 86th street, a roof is put through there over the railroad tracks, but there are about thirty-five feet above the rails, a part of the streets is cut away; and a landscape which has cost the city many years and many millions to put there is to be torn away to put these tracks inshore from their present position. It is done by open cut construction, and when it is done the only thing to be done by the railroad company is on the roof of that structure. Now the terminal committee was requested to issue a summary report in which they admitted that the finishing of Riverside Park west of the railroad was no part of their concern, that sometime in the future, whenever the railroad work was finished, application could be made to some future Board of Estimate and ask for an appropriation to landscape and finish that part of broken rock which is a part of Riverside Park, which is left unfinished and untouched, although the statement made to the public was that the park was to be finished down to the water's edge.

From the point of view of your Committee it seems to me that the thing fundamentally wrong about these plans is first there has been no real appraisal of the rights of the New York Central on the behalf of the New York Central, nor has there been any real appraisal of the lands and rights which the railroad will possess if these plans are carried into effect. Lands under water are conveyed in fee to the railroad on a basis of so much per square foot, usually a dollar per square foot, which is a valuation that prevailed there nearly a half a century ago and which coincides with the leases made there half a century ago. The statement is made in the

report of the terminal committee, page 19, that the tracks of the New York Central are so located under the present that to build a two-track structure for other roads to carry tracks which should be owned by the city and reserved for possible use by, etc. It is to be noted that these tracks have been kept to the west of the New York Central Company's line, so that they may have direct access to the city piers.

While unwilling, in connection with the agreement, to definitely arrange for the handling of foreign traffic, etc., the officials of the railroad company stated to your Committee that in all probability it would be possible to arrange in the future for the handling of such business up to the, etc.

In order to make the reservation of the provision for city constructed tracks of later value, the Committee insisted that the New York Central Railroad Company should build, etc., to carry the inshore side of a city line to be built in the future. This will make it unnecessary to encumber the streets with more than one, etc., expense.

Now that refers to the section between 30th street and 59th street. Now when you bear in mind that the New York Central gets its rights immediately upon the signing of a contract, it refuses to make any agreement with respect to the use of those tracks by any other railroad company now or in the future. The provision for two city-owned tracks between the four tracks of the New York Central and the waterfront is wholly fallacious. In the first place you, as Chairman of the Public Service Committee, know that the city could not build those two tracks without first getting a certificate of public convenience and necessity. If it should prevail in obtaining such certificate, it could not build such tracks unless it had the money to do it. Within the present year the city of New York has closed its night schools, so that the foreign born citizen can neither learn the English language in night schools nor can the young girls and boys have any opportunity of perfecting themselves in various directions. In other words the city is so destitute of funds at the present time that the very education of the children, of its youth, is cut off. You can see how remote is the time when the city will have any funds to build any railroads out-

side of the city's line. Even if the city had the money and got the certificate, the moment they get to that point the only thing the New York Central has to do is to say that the Lehigh Valley and other roads, it is not necessary for you to take rights from the city of New York; you can get those rights from us; we will deal with you. And the New York Central in that way obtains the revenue for the use of those tracks which will preclude any possibility in the remotest future of any city-owned tracks to which other lines can have access. Now it is the grant of concessions of that kind which are perpetual in their duration which relate to all the rail track on the west side of Manhattan, dealing as it does north of 59th street and south of the Ship canal, that no other railroad can ever have any real access except by use of lighters. Those are the concessions that these plans propose to be granted by the city of New York to the New York Central Railroad Company. The appraisals have been made upon the recommendation of Mr. O'Malley in the comptroller's office, aided by Mr. Goodrich, one of the engineers, who has been so long connected with that matter. Now, north of 135th street and along that waterfront, which I showed you there a while ago, these plans involve the establishment of an enormous marine terminal. That is the purpose of this land under water shown on this map on sheet No. 27. There are upwards of 27 tracks there in the nature of a yard which are outside of the mainland tracks. This section of Riverside Drive is built up with high class apartment houses. They all overlook this enormous yard which is placed out there and is so laid out that lighters and ocean-going vessels can anchor alongside this marginal way and exchange traffic with the railroad, because that has a provision here for the laying of railroad tracks along there to provide that access. Now that is justified upon the claim that they need facilities for the Harlem tracking; but as a matter of fact there are only seven of those tracks that lead to the platforms that the Harlem traffic is taken to and is received from. And as a matter of fact, 300 yards inshore there, between the subway and the Fort Lee ferry, is a perfectly ideal location for a terminal yard for the accommodation of the Harlem traffic, where terminal buildings and tracks can be laid to which access can be had from

at least two different street levels, without the depreciation of private property that must follow with the establishing of a yard there. There is no justification whatever for the establishment of a marine yard there north of 135th street on the claim that it is made to serve the Harlem traffic. The Harlem traffic is served by carrying it. There is a situation almost identical —

Senator Thompson — The Act of 1911, to which you refer, gives to the city absolute power to compel whatever improvement they see fit to be made and to be paid for by the railroad.

Mr. Craig.— You are in error. It gives the city no power of compulsion, it merely authorizes the city to consent to whatever the railroads may acquire. It does not authorize the city to place any compulsion whatsoever upon the railroad.

Senator Thompson.— The act passed both houses of the Legislature and was sent to the mayor. The Ellenbogen Act did empower the railroads to make these improvements, under such terms as the city saw fit.

Mr. Craig.— I would not agree with you. I don't think it did so. But the act which Senator Boylan introduced in 1915 placed the whole thing in the hands of the Public Service Commission. It was operative after five years. There is a great deal of detail about this and it is impossible to go over it all at once. And I will leave you these reports and land maps. Let me say in this connection, the only claim for tearing up Riverside Park and giving it to the railroad is to extend the railroad yard north of 72nd street. The space that the railroad gets by extending north of 72nd street compensates it for the space that it is now using in its present yard, this section on page 15, north of 59th street, which it proposes to use under the new plans for the erection of terminal buildings and warehouses. Now that is an enterprise that is wholly disconnected with the railroad yard proper. It shows, however, how buildings of that character can be placed at 135th street for the Harlem traffic. Now the space that they use for these terminal warehouse buildings there, they make up under these plans by putting them in Riverside Park north of 72nd street. So far as Riverside Park is concerned that stands the city

at forty-three million, eight hundred forty-seven thousand. The city can be put out of sight by depressing the tracks there and the park surface can be carried over them at a nominal expense. You may not have in mind that in 1894 all the land under water outside of the railroad and from 72nd street north to 129th street was added to Riverside Park for the purpose of preventing any extension of the railroad tracking. At that time, among the land which was acquired under the Act of 1894 was provided a three-mile strip, but up to the present time any improvement of it for park purposes has been stalled by one operation and another and in 1913, under Mitchel's plan it was proposed to use it for railroad plans. The whole strip was filled in, with the rock from the Aqueduct tunnel, while the hearing was being held, and in that time practically all of the rock fill in front of Riverside Park was filled in and when Mitchel's committee made its report it showed tracks to be laid there on that park. In March, 1913, there was a bill introduced in the Senate by Senator Pollock to leave that property for such use as the Board of Estimate might designate. Mitchel's plan — that legislation was defeated by the West End Association. The same thing was attempted by a member of the charter. It got through both houses and was vetoed by the governor upon opposition. Now that is the burden that is thrown upon the property owners up there all the while, to prevent a thing of this kind being done and done upon such publications as appeared in the New York Times of April 22nd, 1916, and upon the basis of a report which in its fundamental particulars is absolutely untrue, although signed by Comptroller Prendergast and other members of the committee.

Mr. Moss.— Mr. Chairman, in view of the prospective development of the city, especially along that Hudson river waterfront, it looks to me as though this is a graft which may be almost equal to the subway graft, and in sending this testimony to the mayor to-morrow I sincerely hope that the mayor who stood consistently in favor of the city against the subway graft may see a similar light in regard to this graft.

Now in order to complete this and get it out of the way I want you to hear a little testimony from Mr. Rosenbluth concerning the real estate values here.

While we are waiting for Mr. Rosenbluth, Mr. Miller, you take the stand.

Mr. J. BLEECKER MILLER, being duly sworn, testified as follows:

Examination by Mr. Moss:

Q. Mr. Miller, you have in view of this situation and some facts in your mind that may help us to get a complete picture of this matter. Please let us have what you know. A. Merely to explain my connection and to correct one or two statements of Mr. Burr's, if I may be allowed to do so. I would say that Mr. Burr stated that nothing was done in the matter of the case of the Hudson River Railroad Company and the Saxe bill. Well, I would like to say that thirty-six years ago I started in with the West Side Protective Association, which took up this agitation and which had a great many hearings before the Board of Aldermen, and resulted in the introduction of a bill by Assemblyman Quinn, and also the case of Green against the New York Central, of which I was counsel. Then the league was started and later we had the case of Wilson against the New York Central, which I tried for damages along Riverside Drive.

Now what I undertake to do is to take this report of values which the city is to pay for the railroad (on page 47 of their report) aggregating \$5,000,000 and a half, and I will show that not one cent of that should be paid, for the reason that the railroad does not own what it undertakes to sell to the city, and that these titles have not been examined properly — if they have been examined at all — and that this whole item of five million and a half dollars practically should be stricken out from the computation. I would say that this is no loose statement of mine. I called this to the attention of Mr. Mitchel and Mr. Prendergast right after Judge Page's decision, before the 1913 report was made. I told them they were attempting to do something which could not be done. When that report came up for discussion, Mr. Mitchel, who presided, said "I wish somebody would show me how we can stop the railroad from using steam cars on the land which they own." I said, "I will answer that in this way: They

do not own it, they may own a very small portion off 59th street, and the city owns the rest of it." Mr. Mitchel said "I am sorry I can't take your opinion. I have the opinion of the corporation counsel, and we must take his opinion." I said, "That is interesting. Let us see the written opinion of the corporation counsel." "Well," he said, "it is not in writing." Well, we adjourned and there came another meeting, and there came somebody with a verbal opinion. I said, "That is no written opinion." The man who gave the verbal opinion said "Relying on the decision in the case of 203 New York, I say that the city cannot interfere with the railroad from Spuyten Duyvil to Canal street." I got up and gave the judgment which was entered in that case, which merely prohibited the placing of the tracks south of 59th street; thereupon they backed down. Then Mr. Burr said, "At the next meeting we will have a written opinion. We had the next meeting and there was no report. There was a report on the constitutionality of it, and although in the minutes it appeared that a fourteen column opinion was read there, not one word was said on the subject. To the contrary, there was a general cry as to where the opinion on that title was. Now it has come up, and we have here an opinion of the corporation counsel, in which he recites that the city owns the land, just as I said it did, north of 59th street, and he argues it out very nicely; and suddenly he jumps around to the conclusion and says, "Yes, the city owns it, but it is subject to the use of the railroad." Now there is not a word of proof here of how the use of the railroad comes in. Now you know perfectly well if you have an abstract, this is the property of A, subject to the use of B, but you turn over this abstract to B, and you don't find out how B comes in, it is similar to this 12th avenue business. The title of this is in the city, and yet you will find the conclusion, it is in the city, subject to the use of the railroads, and then they go on and make these ridiculous valuations.

Now, as I said, if you take up every one of these valuations, beginning with \$469,000, and you take this plan and compare it, it is something utterly absurd. Here we are paying on one sheet \$469,000, on another \$277,000 for the kindness of the railroad in removing the tracks from the public streets. Now, what the railroad claims, and what this corporation counsel does not protest

against as he should, is that in some way that case in the 203 New York gave the railroad a perpetual easement here. Now the only thing that that case said was that the city could not remove the tracks, and it said that because it had worded a resolution so carelessly.

Now in the first place, even if it can't remove the tracks, it can limit the use of those tracks; so that practically covers that case. In the second place in that case it was never brought up in resolution 49 as to what kind of cars were to be used, so if that ordinance and that case applies, they could to-morrow use horses north of 30th street. However, above 40th street it was still private property, and therefore this case does not apply to more than twelve blocks in the city of New York, and yet the corporation counsel approves these things where they are giving hundreds of thousands of dollars for the railroad merely agreeing to take up its tracks from streets, when it is under every obligation to do so. The trouble in that case was that the other ordinances were not brought up. One of the ordinances particularly limited the Hudson River rights to determination of the Hudson River charter. The ordinance of '67 was never brought up before the court because it was a peculiar equity suit which the city allowed itself to be inveigled into.

Then after striking out all these items about the streets, we skip up to the freight charges at 59th street, and there, as Mr. Craig said, and as we all know, there are these immense piers which are worth at least \$250,000 apiece; a million and a half are left out of the count entirely. Now those were under two leases, and when those leases have expired the city has control of those piers, and when the railroad filed the map in 1913 those piers all showed, and still here you don't see those piers at all.

Q. You say that this map which Mr. Craig has referred to, sheet number 18, is false because it does not show the piers that exist. A. The piers were leased on condition that when the lease expired they should belong to the city, and yet all this land was sold to the city without reference to the piers which stand on it.

This map shows the piers, six piers, on map 15. Every one of those piers is worth a quarter of a million, and yet this land here is to be valued by the square foot.

Senator Thompson.—The railroad gets those piers under this map. A. Yes, it is to be transferred absolutely without one word about the piers. Then they start in on the line through the park, and here they have the yellow line and the red line (map 19) between, and in all these cases here, 12th avenue is put right on top of it. I have the maps here which show 12th avenue lying right on top of this railroad. (The witness is now referring to a map brought from the county clerk's office, damaged map, 12th avenue from 59th street to 153d street, New York, Richard O'Gorman, counsel to the corporation, number 18.) That starts right from the freight yard and goes up here. Here is Hudson River Railroad 94th street, Hudson River 105th street, Hudson River Railroad 114th street. Then it skips two or three blocks and comes back again, Hudson River Railroad 136th street, Hudson River Railroad 137th street, and Hudson River Railroad 138th street. Now all these things have been thrashed out thoroughly in the case of Wilson against the New York Central, and Judge Page said that that was simply a public street and that they had no right whatever in the form of a title. Now that takes up a very large part of these subsequent items and what remains there is taken up in this railroad map. The railroad filed a map when it got its fee to the upland, and that map shows the land above and below high water, and that shows that there is very little left. The land in 12th avenue was below high water and the land belonged to the city of New York. There were a few cases where the upland owners got grants in New York city and almost every one of those grants was in 12th avenue, so that I say here again that almost every piece of these subsequent deeds is taken up by the fact of it being land under water. If we had that map here, I could give you accurate demonstration of that. Now that takes up just about the \$5,000,000 which they are asking the city to pay. If you think perhaps that I am a little positive, or what my authority is, I will just mention the fact that I have examined more titles than any man that ever lived. I said I was not going to examine these deeds for nothing, but now I have done it practically for nothing, with the result that the whole \$5,500,000 of it ought to be stricken out as bad titles.

I have been to the corporation counsel's office and I have said, "Let's see your abstract," and they won't do it. I wanted, before

this Committee met, to be able to say that I had seen the abstract and seen what excuse they had for such a piece of business.

Mr. Moss.— Mr. Chairman, Mr. Miller has been very modest in his statement, but, as a member of the bar, I want to say that he has understated the value of his opinion. I suppose if you were to hunt all through the bar, you could not find a man whose opinions would go as far as the opinions expressed by the witness.

Senator Thompson.— I don't understand it, and I don't profess to. It is a funny thing that the city can stop itself as easy by some act, some unofficial act, perhaps of an official, and can stop itself, as we heard it in relation to the electric franchise, but the railroad company can't possibly stop itself. I don't understand it, and I don't suppose I ever will understand it.

Mr. Moss.— Mr. Chairman, in view of what you just said, do you remember the remark of one of the witnesses who said that he did not blame men who were temporarily employed by the city, with a prospect of leaving the city's employment and having to receive employment in other directions, for not being particularly antagonistic to railroads and large corporations.

Senator Thompson.— At the same time the same man working for one private concern, his contract about to expire, would not think of giving any less energy to his employer in the last week, even though he had to go in the employ of some other concern. I don't know what there is about it, but there is something or other. I don't understand it anyhow.

Mr. Moss.— Mr. Rosenbluth, you have a line of information to give us. Please proceed.

ROBERT ROSENBLUTH, being duly sworn, testified as follows:

Mr. Rosenbluth.— The first thing I would like to bring to your attention, Mr. Chairman, is the fact that the statement made so often, both by city officials who are handling this for the city and by the New York Central officials in public meetings, that this represents all that the New York Central will give. In other words, this is the best the city can get. Now what that amounts to I think can very easily be put in one of two terms; that is, that they have not examined their powers. That was explained

to me in this way by one of the city officials who is most active in coming to the present terms. He said, "Supposing we could get some legislation that we could rip up the railroad people's tracks they would laugh at us because if we pulled up their tracks and made them stop up at The Bronx, in three days the people would murder us."

Mr. Moss.—Who told you that? A. It was told to me in private and I wouldn't like to say who it was.

Senator Thompson.—Write it down. (Mr. Rosenbluth writes the name on a slip of paper and hands it to Senator Thompson and Mr. Moss.)

Mr. Rosenbluth.—The answer to that of course is that they have a franchise. Now the Public Service Law compels a person having a franchise to give adequate service, and the law on that with regard to summary proceedings to give service is so strong — for instance that law, paragraph 57 of the Public Service Commissions Law says that "Whenever either Commission shall be of the opinion that a common carrier, railroad corporation or street railroad corporation subject to its supervision is failing or omitting or about to fail or omit to do anything required of it by law or by order of the Commission, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law, or of any order of the Commission, it shall direct counsel to the Commission to commence an action or proceeding in the Supreme Court of the State of New York in the name of the Commission, for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction. (Summary action by court in case of default.)" They can go to court and compel them not even to seize the service, not even for a day, without getting into trouble, so that that is practically laying down on the job when you say they can do these things and that you can't do anything else.

Now, the second point is that all the rights that the railroad company has flow from two acts — the Act of 1846 which chartered the Hudson River Railroad, and of course that was amended later, but that amendment contained all the liabilities, restrictions, and

everything in the original act, in the first place. In the second place, the ordinance passed in 1847, which was necessary before the act of the legislature, became valid. Now in the act of the Legislature, all they had was this: "The said corporation is hereby authorized to construct, erect, build, make and use, a single, double, or treble railroad or ways, of suitable width and dimensions to be determined by the said corporation, on the line, course or way designated by the directors, as aforesaid, as the line, course or way, whereon to construct, build or make the same," etc. Now that single, double or treble track is emphasized in a good many places. In the Laws of 1869, chapter 917, paragraph 3, it says, "Upon the making and perfecting of such agreement and act of consolidation as hereinbefore provided, and filing the same or a copy thereof in the office of the secretary of state as aforesaid, the said corporations, parties thereto, shall be deemed and taken to be one corporation by the name provided in said agreement and act, but such act of consolidation shall not release such new corporation from any of the restrictions, disabilities or duties of the several corporations so consolidated;" this is in the Laws of 1869, where their rights were extended for five hundred years, and it says, "such act of consolidation shall not release such new corporation from any of the restrictions, disabilities or duties of the several corporations so consolidated," so they can't set up any claim to do anything by the later act which did not appear in the first.

Now in the first act here we have the Board of Aldermen's ordinance, the consent to which was necessary before the legislative act became operative, and the ordinance of 1847 was made so that it was not operative with full consent, although every obligation stated in it was filed by the railroad company with the city, and that was so filed. Now that consent was to "construct a double track of rails." Here are some of the essential things I want to bring out. It said, "such railroad company, at their own cost, to construct some stone bridges across such of the streets intersected by the railroad as may, by the elevation of their grades above the surface of said road, require to be arched or bridged, whenever, in the opinion of the Common Council, the same shall be necessary for public convenience; and also to make such embankments or excavations as the Common Council may deem

necessary to render the passage over the railroad and embankments at the cross streets easy and convenient for all the purposes for which streets and roads are usually put to; and the said railroad company shall also make, at their own cost and charge, all such drains and sewers, as their embankments or excavations may, in the opinion of the Common Council, render necessary; and said company shall be at all times subject to such regulations, with reference to the convenience of public travel through such streets and avenues as are affected by the said railroad, as the Common Council shall, from time to time, by resolution or ordinance, direct." Now you can see there where a good many obligations which now attach to any rights which the railroads have, and which, if they start and wipe the old slate clean, the company is going to get rid of.

Just if I may deflect a little bit from the regular course to show what that means, take for instance this; they talk about surrendering the whole waterfront, because they give up from 59th to 70th street and the city gets from 70th to 72nd street, but they have to cross the whole length of that big railroad yard at 70th streets before that land between 70th and 72nd street is worth one cent. Now under the acts and the conditions and the covenants between the railroad and the city at present the city gloats because it has reserved the right to construct a viaduct over 70th street. When they come to construct that viaduct, even with the right reserved, the city is going to have to put out cold cash to build that, and until then the land is not worth two cents. At the present time all they need to do is to compel the railroad to open it.

Now that leads up to another question with regard to rights. To show, in my opinion, how careless they have been of their present rights, they talk about this Street Closing Act of 1887, in which the Legislature allowed the railroad to build that wall from 59th street to 72nd street and closed the streets. It is freely admitted that that act was unconstitutional. All right, but they say about the lapse of time, "We don't need to question the constitutionality of that act at all because that act has been amended by every other street closing act passed since that time, and also confirmed in the Constitution, that all powers with regard to opening and closing the streets are in the city, so all the Board of Esti-

mate needs to do is to sit down at a meeting and declare these streets open again and then the railroad can't protest." In this particular instance from 70th street, it would have to be built at the expense of the railroad company, instead of as at present with the right reserved for the city to invest its money in it at some future time.

There is another thing with regard to that case of 1906, that was tried with regard to the right to tear up the tracks. Now there has been read into that thing, by inference, that the railroad has a perpetual right of use on these streets. Now all that was tried in that case was whether the city had the right to do it, and it was very clear, if, instead of quoting Judge Bartlett's opinion on that, they had quoted Judge Cullen's opinion, the rights and limitations of the railroad's rights are set forth so clearly that it is worth while reading it into the record here:

"The permission to occupy the street was solely as a means for running from one terminus of the road to the other; nor did the franchise to maintain the road include an unqualified right to maintain it on the surface. The 'power reserved to the Legislature to alter, amend or repeal the charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it and which the Legislature may deem necessary to secure either that subject or any public right.' (Close v. Glenwood Cemetery, 107 N. S. 466, 476.) Under this doctrine the Supreme Court of the United States upheld the validity of an act of the Legislature of the State of Connecticut compelling a railroad company to abolish, at its own expense, all grade crossings as a valid exercise of the police power. (N. Y. & New England Railroad Co. v. Bristol, 161 U. S. 556.) So in the case before, I think it clear that the Legislature may so regulate the plaintiff's railroad in the city of New York as to remove the constant menace and danger to life occasioned by its present operation."

Now when they say "this is all the railroad will give," all they do need, under this very clear opinion of Judge Cullen, is to go up to the Legislature and get an act declaring the operation on grade a nuisance in New York, and that it has been declared as

unconstitutional; and the object they are after could be secured without one cent of cost to the city of New York, under the franchise that the New York Central has, and the New York Central could not refuse to carry it out, because their franchised rights under the Public Service Commission Law would compel them to give service naturally on a right of way and on a track so built to conform with the police power of this State. Now with all those limitations freely set forth and developed in that way, to say that the railroad's "perpetual right of user" is equivalent to a fee, as in many cases on those colored maps that are colored red as if the title were in the railroad, where the title is unquestionably in the city, the corporation counsel says in the legal part of his opinion, that the title to certain things in the city became vested in the city subject to the use by the railroad company; or he says where the railroad is running on this land that was originally land under water, it is nothing but a license to occupy the same for railroad purposes, which of course they would lose. He also points out the fact that those rights would be lost in a fee absolutely clear of the city if the railroad had to abandon that, which they naturally would.

Now, there are two main sources of error in the title, One is the beds of streets, and things like that, which have been neglected; and the other is in a nice blanket sum of \$500,000 to release the record title. The exact wording of it as it is put in here is, "For a release of city's record title in and to premises over which the railroad company has a perpetual right of user." To begin with, that perpetual right of user is subject to a great many limitations, and they don't itemize that at all. You start to fit the adjoining land that that is put into and then, just for the sake of argument, calling that a surface easement that the railroad has on it and then taking the Committee's proportional values at a surface easement as worth 33 1/3 per cent of the fee. Without disputing any of these points, the amount of land affected like that, the city's interest in it would be something like \$2,362,592. Now, they don't itemize that \$500,000. The corporation counsel says here, if you will look at his opinion on page 46, that "In the district between 60th and 141st streets the foregoing general conclusions must, by reason of the acquisition of the fee of 12th avenue in street open-

ing proceedings, be modified to the extent that wherever any portion of the right of way falls, passes over or the railroad is constructed upon premises within the lines of 12th avenue, the title to such premises whether acquired by the railroad company by deed, by adverse possession or by condemnation proceedings, became vested in the city subject to the use by the railroad company." Now can you tell me why, if the corporation counsel says that, you still find (as you will find in some of these sections colored in here) that the title is described to the railroad company, but the city is allowing 17½ per cent of the value of the fee to the railroad company for the right to build a viaduct over it. That is the kind of thing you are finding in there.

We have been trying to see a fair examination of these titles. We think that it is not fair to give away what is being given away. There are a good many other covenants that I have not mentioned, that is, there were rights for wharfage, that is rights for another type of covenant that is not listed at all. The railroad company's grant of land under water was subject to rights at any time the city wanted it. To make a railroad company open streets, construct the street and maintain the street, is true for instance in this section to be turned over.

There is no question in regard to franchise values. You may quibble over the word franchise if you want to. What should be done and what can be done very easily is to value physically and financially what rights interpreted in a strict legal sense flow from the present charter, with all the limitations and everything.

For example, let me suggest a course of procedure like this. The city has in its employ many experts on franchise valuations. They say that this is the old franchise, subject to a good many restrictions and limitations, and was for a certain definite purpose. It is a well-known thing in railroad franchise valuation to-day that there are methods of putting values on rights interpreted in a strict legal sense. There is no evidence of any kind, and I believe it to be stated as a fact that no attempt ever has been made to put an exact valuation on what the railroad company owns now in rights and what the new rights would be worth. Not only that, but there are new operations going to be on their own land and as such will be free from franchise. It is a question of very con-

siderable importance. It so happens that the city, among other things, has in its employ and the Public Service Commission have in their employ many experts on franchise valuations who ought to be asked publicly to come on the stand and say how they would do it if they were advisers to a private corporation or if they owned this property themselves and were thinking of turning it over to the railroad, what they would expect out of it, before they would grant all these new facilities. Take one of the best experts in the country, a man that wrote this book here, Mr. Willcox. He is deputy commissioner of water supply, gas and electricity. It would not cost the city of New York two cents to ask him to come on the stand. He has a professional reputation. Now, if men like that would come and publicly say that the rights that flow from this new plan do not cover one cent of value, that they can ignore it entirely, there would be some basis for it, but I should think that the Board of Estimate would want to protect themselves. I am sure the United States and the State Commission would lend their men. Why should not those men be brought to a public stand under oath and asked to state their expert opinion as to whether or not there are any values, whether you call them franchise or not, or whether you call them permits or rights. But it is worth millions and you could do a very big service, in my opinion; that is, if you take the suggestion. Even if just to-morrow you brought some of these men, whoever is working on railroad franchise in the Public Service Commission, Willcox and Maltbie, and put them under oath and ask them whether they ought not to value the new rights as against those that go under this franchise.

Senator Thompson.—Do you think the Board of Estimate would pay any attention to them? A. I think it would make them; make it very difficult for them to ignore it.

Senator Thompson.—Would it? A. I am just suggesting this.

Mr. Moss.—You would say that the Board of Estimate could protect itself by doing certain things. Now, we are going to send the testimony of these last three witnesses to the mayor for the very purpose of giving the Board of Estimate and Apportionment an opportunity to protect themselves and I imagine that if they do not protect themselves they will have a rough account to give

in the future. A. I would also suggest that there is to be free access to the titles of the city. We may have made an error on the titles, we do not know. I can't see any point, if the title is good, it is good, that is all and I do not see any point in keeping it from the people.

There are a good many lines that ought to be brought out but I do think that those two lines, forcing out the abstract of title and forcing men like Willcox to come on the stand publicly and under oath and say whether the city is fair to the public in neglecting to have the present franchises investigated.

Q. Does it need Willcox to convince anybody that that is necessary? A. It would put the other people on the defense. They can say they have consulted experts.

Q. It is sufficient for you to mention their names and to show how available they are. A. They can say they have consulted them.

Q. What proof have you? A. If you, right now, who are solicitous for the public welfare, will meet these people publicly, whether they have been consulted or not; I would not feel that it would be fair to go to a man that was in the city's employ and ask him to give testimony that might be used against himself, in my present capacity.

Q. They can't prove that they have consulted Mr. Maltbie unless there is a record of what he has to say about it, because his public career shows that every time he had to do with the matters he made a memoranda and put it on the record always. A. This would give him an opportunity.

Senator Thompson.—He is part of the city administration. A. What good will it do to bring that up to an investigation two years from now? Let's do it now.

Mr. Moss.—Mr. Miller has suggested that we should not stop to give a copy of this record to the mayor, but it ought to go to the other members of the Board of Estimate and Apportionment, because he may not show that copy to them. A. Would it fortify the citizens in any suit that they make or injunctions if this record under oath that men made that they had not been consulted as a basis of action.

Q. It might do. A. We stop taking testimony Saturday and we have given much time to it and do not believe we can give much more.

Senator Thompson.—Mr. Maltbie and Mr. Willcox we will ask here to-morrow night.

Senator Thompson.—Now, you can extend your statement and give me a copy of it any time within the next two or three weeks.

Mr. Moss.—The thing that is necessary to satisfy the taxpayers is an injunction.

Senator Thompson.—In relation to this electric matter, so that we can understand when we come to make the report on it, this .52 per kilowatt hour paid by the Third Avenue Railroad Company. In order to compare it with what the railroad is paid for power you have to reduce it into horse power. Now, a kilowatt is one thousand watts, 746 watts constitute a horse power. A horse power commercially is 746 watts an hour for 24 hours a day and 365 days a year. That is, burning all the time. Now, a kilowatt burning an hour is a standard. It burns one hour. That costs a cent, say, 24 hours would cost 24 cents; 365 days would cost \$87.60; a horse power would be one-fourth less, which would make it \$65.70. One cent a kilowatt means \$65.70 a horse power; .52 of a cent means \$34.16 a horse power, which is practically what the Third Avenue Railroad Company paid. The cost to the company at .46 of a cent is \$30.22, so that they had \$4.00 a horse power out of it. Now, the power from watts generated at Niagara Falls costs from \$12.00 to \$20.00, depending, however, on how they transmit it. The transmission of 30 miles. For a transmission of 20 miles they sell it for \$16.00 a horse power, 20 miles they sell it for \$20. They make it here by steam power at \$30, but the cost when it gets into the kilowatt hours is not affected by the difference between the cost of \$16.00 a horse power or \$30.00, because the difference is so little. Now, in order to work it out, one hour drawing a thousand watts is a kilowatt, 365 days, drawing 746 watts is a horse power. Now, you see how it works out. It is hard to understand this difference.

We will suspend until to-morrow.

Yesterday afternoon after adjournment I called at the City Hall and called upon the mayor, who received me in a very

friendly manner. I asked him if there were any facts that he could give me as to the public statements that I had had lately in regard to Mr. Klein, as to whether he was trustworthy, and the mayor said that he had no facts to give me and gave me none. He said he personally did not get along with Mr. Klein, and so I said, "In other words you do not like him?" He said, "That is probably the insinuation." Under the circumstances there is nothing further for the Committee to take up. We will continue Mr. Klein in our service until we get through.

Adjournment.

MUNICIPAL BUILDING, NEW YORK CITY.

SECOND SESSION.

Mr. L. HOWELL LAMONTE, assistant corporation counsel, residing at 250 West 104th street, being duly sworn, testified as follows:

By Mr. Klein:

Q. ou conducted the acquisition of Dreamland and adjacent property? A. Yes, sir.

Q. Will you tell the Committee what the Dreamland parcel cost the owners at the time the city acquired its option on the property? A. I can't answer that because we bought it a good many years before the option was paid.

Q. In your proceedings don't you estimate the cost of the property to the owners? What do the records show? A. What they paid for it?

Q. Yes. A. They bought it in two tracts: One, damaged No. 1, in 1904, for \$225,000; the property of which damaged parcel No. 2 formed a part was purchased in 1903 for \$447,500. Those two parcels constitute the entire tract known as Dreamland, acquired by the city. Those two constitute the parcels they own between Surf avenue and the ocean.

Q. It constitutes the entire Dreamland ownership? A. Yes; between Surf avenue and the ocean.

Q. When the city acquired these two parcels there was omitted from the original tract a frontage of 200 feet deep from Surf avenue, running about a thousand feet, was there not? A. The property situated between the parcels acquired in the proceeding of Surf avenue had a frontage on Surf avenue of 293 feet and a depth south of Surf avenue of 200 feet.

Q. That is parcel one? A. That is parcel two. The part remaining in the case of No. 1, was the piece of land 150 feet in length by 200 feet in depth, and its normal boundaries was 100 feet south of Surf avenue and parallel thereto.

Q. How much frontage on Surf avenue does that make for the entire tract that remains for the owners? A. 293 feet. It is bounded on the north by Surf avenue, distance 293 feet; on the south by line parallel to Surf avenue and 200 feet southerly thereof; and on the east by the property of Prospect Park and Coney Island Railroad Company, which easterly boundary is 1200 feet; and on the west by line 100 feet in length, beginning 100 feet south of Surf avenue.

Q. The city acquired the Dreamland property under resolution of the Board of Estimate, did it not? A. The city took title by virtue of a resolution of the Board of Estimate.

Q. What date was that? What was the date of the title? A. September 14, 1912.

Q. The city had taken an option on the Dreamland tract and adjoining parcels, had it not? A. The city had at that time adopted a resolution receiving the option on the Dreamland property.

Q. What was the date of the resolution of the Board of Estimate? A. January 11, 1912.

Q. Was that the resolution of the board authorizing the corporation counsel to bring proceedings? A. The date was the same as that resolution.

Q. From whom did the city take an option to the Dreamland property? A. The option was signed by the Dreamland Company, William H. Reynolds, president.

Q. What was the amount fixed in the option for the property? A. \$1,000,000 with interest at the rate of six per cent to be computed from August 1st, 1911, together with taxes and assessments which may become due.

Q. Why was the date set 1911, that the option began to run from? A. I don't know.

Q. Did that resolution provide that not more than that sum of money could be paid for the Dreamland parcel? A. The substance of that resolution was that if the award made by the commissioners was less than the amount mentioned in the option they could not exercise the option, but if it was a greater sum than that amount, then they could exercise the option.

Q. What was the award made by the commissioners? A. In the Dreamland parcels of land, \$1,014,632; improvements, \$20,900.

Q. Did that carry interest? A. That carried interest from September 14, 1912.

Q. How much more was that than the option price? A. After you have added the interest to the amount of the option, that amounted to more than the award with interest. The option price, plus interest, was a greater amount than the amount of the award with interest up to the same date.

Q. What was the option price? A. I don't know, sir.

Q. The city took the property at the option price? A. It was submitted to the Court and the city appealed to the Appellate Division and the Appellate Division reversed the decision. The city has not accepted that.

Q. On what ground did the Appellate Division reverse the Special Term? A. On the ground that the award was too high.

Q. What did the Court say? A. I have the decision right here.

Q. Judge Mills, is it? A. Yes.

Q. Did Judge Mills say anything in regard to the right of the city to fix an option on the property? A. Shall I read from the opinion?

Q. Yes, read. A. Reading from page 1026, New York Supplement, April, 1916, from the opinion of Justice Mills of the Appellate Division, case of Public Park of Coney Island. "I think that even if the Board of Estimate and Apportionment, having the authority to purchase and make an offer to the owners of this land, such offer could not have been proved against the city before the commissioners. Although I know of no opinion directly upon the point, but certainly the fact of the mere taking by that board, of that option is not evidence against the city."

Q. Has the city of New York, or any other official body ever fixed an option price on any other property acquired on behalf of the city by condemnation? A. The board does not fix an option price.

Q. Has the board ever accepted an option? A. The board has received options in one or two other cases.

Q. In which other cases? A. The one I know of is the one of the railroad terminal at South Brooklyn. That involved the property of the First Construction Company.

Q. What other property did the city fix an option on? A. I believe on the Public Park at Rockaway.

Q. Known as Seaside Park? A. Yes; they received an option from the owners in the same way as the Dreamland case.

Q. Did the city ever accept an option on property acquired through condemnation before that time? A. Not that I have ever known.

Q. How long have you been in the Condemnation Bureau? A. Nineteen years.

Q. During that time you never knew of any step on the part of the city like that? A. No, sir.

Q. This particular parcel in Dreamland, No. 2, so-called, purchased in 1903, No. 1, purchased in 1904, totaled \$617,500. On January 12, 1912, eight years after, the city, through the Board of Estimate and Apportionment, took an option on that same land, minus a certain portion of it, for a million dollars. Is that right? A. According to the minutes of the Board it adopted a resolution receiving an option covering the property in question.

Q. Did anyone appraise the property for the city before this action was taken by the city officials? A. I understand they did.

Q. Such an appraisal was reported to the Board of Estimate? A. I don't know. An appraisal was made prior to receiving the option.

Q. William P. Rac testified before the Commission of Appraisal regarding Otsego street, and he made an appraisal in connection with the property taken by the city, acting in behalf of the city? A. Well, I don't know.

Q. Why I ask, there is a Mr. O'Malley in the department of finance who is the official real estate appraiser of the city. Is that true? What is his official designation? A. I don't know.

Q. How would William P. Rae come into this? A. I don't know.

Q. Was he appointed by the city or the Dreamland corporation? A. I know that he testified in the Otsego proceedings and he made the appraisal.

Q. In whose behalf did William P. Rae, appraising the Dreamland property, act? A. Mr. Rae testified in the matter of the Otsego acquisition. He appraised that property for the comptroller.

Q. Do you presume, Mr. Lamonte, in view of the fact that Mr. O'Malley is the official appraiser for the department of finance, that Mr. Rae was retained especially by the comptroller to appraise this land? Is there anything in the record that would give you that information? A. The record where?

Q. In this record, or any you have to show Mr. Rae was retained to appraise this special land? A. I couldn't tell until I went through the record.

Q. What was Mr. Rae's appraisal figure, Mr. Lamonte? A. For what property?

Q. For the Dreamland property. A. I know what he testified in the Otsego street case.

Q. Will you read that article of his testimony?

Q. Was not your appraisal one million and a quarter? A. It was \$1,350,000.

Q. That was for that part of Dreamland the city was to acquire? A. I understand it was.

Q. This is the same William P. Rae who testified before in the Otsego proceeding? A. He is the same William P. Rae who was subpoenaed and he did testify.

Q. As the expert for William H. Reynolds in the First Construction Company? A. Yes; they produced him under subpoena.

Q. In connection with the Dreamland property the option that the city took was signed by William H. Reynolds, as president of the Dreamland Corporation. Is that correct? A. Dreamland, William H. Reynolds, president.

Q. The date of that option was January 11, 1912? A. Yes.

Q. At that time did William H. Reynolds own the Dreamland property; or did the Dreamland Corporation own the property?

A. The records in the Dreamland case show that the property had been deeded by the sheriff of Kings county to Joseph Huber, September 5th, 1911.

Q. That transfer was on judgment obtained by Mr. Huber against the Dreamland Corporation? A. I think the deed was made as a result of a sheriff's sale to satisfy judgment.

Q. And the title to the property known as Dreamland was not then owned by the Dreamland Corporation at the time the city acquired the option, was it? A. The title was in Joseph Huber as trustee at that time.

Q. Who was he trustee for? A. I understand he was trustee for the people interested in Dreamland.

Q. Was the corporation bankrupt? A. That I can't say, but it must have been when it was sold under the sheriff's sale.

Q. What interest could the Dreamland Corporation have in the Dreamland property at the time the city accepted the option? A. Well, I guess the only interest they had, so far as I know, was under that declaration of trust.

Q. What did that give them? A. I don't know what interest it gave them.

Q. The trust is in the minutes; the declaration of trust signed by Joseph B. Huber of the Dreamland Corporation. A. I am not sure of that.

Q. What was the date of that? A. It was August 29, 1911.

Q. On that same day Huber acquired whatever interest Eugene Wood had in the judgment against the Dreamland Corporation, didn't he?

Senator Lawson.—I think Mr. Klein, you had better have that deed of trust read into the record.

Deed of Trust from the record of papers on appeal from order of Special Terms in 3 volumes. Vol. III, page 1541: DREAMLAND EX. No. 10. MAR. 24, 1913.—DECLARATION OF TRUST DATED AUG. 29, 1911, HUBER TO WOOD ET AL:

THIS DECLARATION OF TRUST, made the 29th day of August, 1911, by Joseph Huber, of the borough of Brooklyn, in the city and State of New York, witnesses:

WHEREAS, by virtue of two certain executions issued out of the Supreme Court of the State of New York, on February 10th, 1910,

to the sheriff of the county of Kings, in said State, upon two certain money judgments of said Court against Dreamland, a domestic corporation, entered in the office of the clerk of said county of Kings, on December 22nd, 1909, one in favor of said JOSEPH HUBER and the other in favor of EUGENE D. WOOD, of said city of New York, which executions were delivered simultaneously to said sheriff on February 10th, 1910, said sheriff levied on and seized all the right, title and interest which said Dreamland Corporation had in and to certain real property, situated on Coney Island, in the borough of Brooklyn and city of New York, more particularly described in the certificate of sale thereof, thereafter executed and delivered by said sheriff to said Joseph Huber and Eugene D. Wood, and said sheriff having, on March 30th, 1910, at public auction, sold to said Joseph Huber and Eugene D. Wood, jointly, all the rights, title and interest which said Dreamland Corporation had in and to said real property, they being the highest bidders therefor, and said sheriff having, on April 25th, 1910, executed and delivered to said Joseph Huber and Eugene D. Wood, his certificate of sale thereof; and

WHEREAS, said Eugene D. Wood, has assigned and transferred to said Joseph Huber all the right, title and interest which said Eugene D. Wood acquired on said sheriff's sale, in and to said real property, and all his rights in said certificate of sale, and his rights to a deed from said sheriff, conveying all said right, title and interest, which said assignment and transfer were made to and accepted by said Joseph Huber, in trust, and upon the terms and conditions hereinafter set forth, to be observed, complied with and performed by him,

Now, therefore, said Joseph Huber hereby declares that said assignment and transfer were made to and accepted by him in trust, for the following purposes and upon the following terms and conditions, to wit: to sell said right, title and interest which said Dreamland Corporation had on December 22, 1909, in and to said real property sold, as aforesaid, by said sheriff to said Joseph Huber and Eugene D. Wood, and to apply the proceeds of such sale as follows:

1st.—To the payment of any unpaid taxes, assessments, water rates, and other public charges that may be a charge upon any part of the Dreamland park properties;

2nd.— To the payment of all awards, costs and expenses growing out of and incident to the pending proceedings, instituted by the city of New York, for the closing of that part of West Eighth street, at Coney Island, lying between Surf avenue and the Atlantic ocean, now constituting a part of said Dreamland park property.

3rd.— To the payment of all unpaid principal and interest owing and due on the \$400,000.00 of mortgages upon said Dreamland properties, that are liens prior and superior to the mortgage securing the payment of the \$750,000.00 of "Mortgage and Income Registered Gold Bonds" of said Dreamland corporation; said prior mortgages being one for \$35,000.00, made by the Gravesend Real Estate Company to the Title Guarantee and Trust Company, dated July 15th, 1902, and recorded in said register's office, on August 13th, 1902; one for \$200,000, made by the Wonderland Corporation to the Title Guarantee and Trust Company, dated September 23d, 1903, and recorded in said register's office on September 25th, 1903; and one for \$100,000.00, made by the Wonderland Corporation and the Gravesand Real Estate Company to the Title Guarantee and Trust Company, dated March 1st, 1904, and recorded in said register's office, on March 3d, 1904.

4th.— To the payment of all unpaid principal and interest owing and due on the authorized issue of \$300,000.00 of the authorized issue of second mortgage bonds, secured by the mortgage made by the Dreamland Corporation to the Hamilton Trust Company, as trustee, dated March 15th, 1906, and recorded in said Register's office, on March 27th, 1906; and all principal and interest owing on loans made to the Dreamland Corporation, the payment of which is secured by the deposit of any of said second mortgage bonds as collateral security or otherwise.

5th.— The payment of all unpaid principal and interest owing and due on said \$750,000.00 of "Mortgage and Income Registered Gold Bonds," secured by a mortgage made by said Dreamland Corporation to the Title Guarantee and Trust Company, as trustee, dated March 12th, 1904, and recorded in said register's office, on March 15th, 1904.

6th.— To the payment of all expenses incident to the payment and satisfaction of said mortgage.

7th.—To the payment into the treasury of the By-the-Sea Company of a sum of money sufficient to make up the deficit in the \$5,000.00 capital fund of that company, caused by the payment from that fund of certain operating expenses of Dreamland Park.

8th.—To the payment, with interest, of the judgment for \$5,277.30, obtained by Paul C. Erteaas, who has brought a creditor's suit, for said amount, against Wm. H. Reynolds, George F. Dobson, Eugene D. Wood, Samuel S. Whitehouse, and Percy B. Purdy, as directors of said Wonderland Corporation.

9th.—The payment to Wm. H. Reynolds, as president of the Dreamland Corporation, of the sum of \$15,000.00, due and payable to him for services pursuant to a resolution adopted by the board of directors of said Dreamland Corporation, at a meeting thereof, held on July 14th, 1911.

10th.—To the payment of all rents, taxes, assessments and water rates, payable by the Dreamland Corporation and the By-the-Sea Company, on the property on the east side of Dreamland Park leased from the Prospect Park and Coney Island Railroad Company.

11th.—To the payment of all other known or ascertainable debts and obligations owing or incurred by the Dreamland Corporation and By-the-Sea Company, excepting unpaid judgments against the Dreamland Corporation.

12th.—To a reserve fund of \$20,000 for the term of one year from such sale, to meet and pay valid unknown debts of and claims against the Dreamland Corporation or the By-the-Sea Company, the part of such fund remaining at the expiration of such years to be paid pro rata to the holders of the "Registered Debenture Bonds" of the Dreamland Corporation.

13th.—To the payment of the expenses incident to the performance of the provisions of said trust.

14th.—The balance of the proceeds of such sale to be applied and paid pro rata to the holders of the outstanding "Registered Debenture Bonds," of said Dreamland Corporation.

And said Joseph Huber hereby covenants and agrees to observe, comply with and perform all the terms and conditions of said trust.

IN WITNESS WHEREOF, the said Joseph Huber has hereunto set his hand and affixed his seal, the day and year first written.

Q. What I meant Mr. Lamonte, Mr. Huber acquired an interest in the trust or in the deed of the property from Mr. Wood?

A. Eugene Wood signed to Mr. Huber, a certificate of sale on August 29th, 1911.

Q. And the judgment against the Dreamland Corporation on September 22, 1906, was in favor of both Wood and Huber? A. Yes.

Q. What was the assessed value of the Dreamland parcel when the city accepted the option for a million dollars plus? A. I can tell you what the deputy tax commissioner, John Dunn, testified to as the valuation of the entire property, running from Surf avenue to the ocean was. That was \$729,500. That included the entire Surf avenue front acquired by the owners of Dreamland, as well as what was taken from the city; that is for the year 1911.

Q. What was the assessed value for the preceding year? A. I don't know.

Q. Did you appraise the value of the property taken by the city in the proceedings? A. Yes, we put experts on to appraise the damage caused by the taking of the parcels.

Q. What was the testimony? A. Joseph P. Day testified that the damage by water was \$449,255.76, and the improvements \$5,700.00. Martin McHale testified that the damage caused by taking parcels one and two was \$428,015.00 and the improvements \$5,700.00.

Q. Did the property owners have appraisers before the condemnation commissioners? A. Yes.

Q. Who were the appraisers? A. Howard C. Pyle was one. He testified that the damage caused by the taking of parcels one and two was \$12,400,000.00; improvements \$40,700.00.

Q. Who retained Mr. Pyle? A. He testified on behalf of the claimants.

Q. What other experts? A. William M. Green. He testified that damage caused to parcels Nos. one and three was \$1,252,460.00; improvements \$25,710.00. David Porter testi-

fied on behalf of the claimants that damage caused to parcels Nos. one and four was \$1,330,638; improvements \$21,710.

Q. Is Mr. Green vice-president of the Realty Associates? A. He has testified that he was in that proceeding.

Q. Did the Realty Associates sell the city the Seaside Park, at Rockaway? A. That I don't know.

Q. The Dreamland Park as an amusement institution was destroyed by fire on May 11, 1911, and the appraisal that your experts made is an appraisal for the land without improvements? A. I gave you the appraisal for the improvements and the land.

Q. You have not the appraisal figures for the years before 1911? You have no assessed figures prior to 1911? A. No, sir, I have no figures, only for 1911 and 1912.

Q. When the city accepted the option from the Dreamland Corporation with William H. Reynolds as president, did you consider that the Dreamland Corporation owned the property that the city acquired or accepted an option for? A. I did not consider it at all.

Q. Do you now consider that the Dreamland Corporation owned the property that the city took? A. At the time we took it legal title was in Joseph Huber's trustee.

Q. When Mr. Reynolds testified before the Condemnation Commissioners did he say he owned the property or that his company owned the property? A. I don't just recall what he did testify. I don't know whether he did or not. The claim was filed first on behalf of the Dreamland Corporation and Mr. Reynolds testified that he was president of that corporation and testified to the mortgages, etc.

Q. The option accepted by the city signed by Mr. Reynolds, president of the Dreamland Corporation states as follows:

"For and in consideration of the sum of one dollar (\$1) and other good and valuable considerations, the receipt of which is hereby acknowledged, Dreamland, a domestic corporation of the State of New York, hereby gives the city of New York and the the Board of Estimate and Apportionment and William A. Prendergast, comptroller, an option to purchase all the award or awards and each part thereof which may hereafter be made by the city of New York to acquire

by condemnation the property hereafter described and upon the said option executed and delivered, and every interest in said award to whomsoever made and free and clear of encumbrances to the city of New York for one million dollars (\$1,000,000) with interest at the rate of six per cent interest from August 1, 1911, together with taxes which may become due after August, 1911. This option is granted on condition that on or before February 1, 1912, the Board of Estimate and Apportionment shall authorize the acquisition of said title to these premises and instruct the corporation to commence proceedings therefor, and the said premises shall become vested in the city of New York and the filing of estimates, and until there shall be buildings on such premises and such titles shall become vested in the city of New York six months after the filing of the other estimates by said commissioner, provided the others are filed on or before April 15, 1912."

This is contained on pages 20-24 of Volume 1, Case on Appeal, New York Supreme Court.

The condemnation commissioners filed there award on what date, Mr. Lamonte? A. The commissioners in the public park at Coney Island signed their final report on April 5, 1915.

Q. And that report was submitted to the Special Term of the Supreme Court, Second Department? And the city appealed to the Appellate Division? A. Yes, the city appealed.

Q. What was the basis of the city's objection?

Senator Lawson.—The names of the commissioners of estimate were William J. Duane, Charles J. McDermott and George J. Steves. A. We contended before the Appellate Division that the board were in excess of the damage suffered by the taking of the property. The brief submitted by the city comprised eleven points.

Q. To prove the claim of the board? A. Yes.

Q. How much in excess was the estimate claimed by the city? A. We claimed that the agreement was about one million dollars in excess of the damages sustained.

Q. What was the total award in the four parcels? A. The total award for all the property acquired as of the date the city

took title was \$2,192,171.73. That is, of course, without the interest.

Q. That is the total award? A. Yes.

Q. What was the award for parcel No. 3 which constituted Prospect Park and Coney Island? A. The award as of the date was \$743,000.97.

Q. What was the award for parcel No. 4? A. The award by the commissioners for parcel No. 4 was, land, \$377,247.20; for expenses incurred, \$23,097.24. Those were the awards the commissioners made.

Q. Those two awards with the Dreamland totaled \$2,192,171.93. When the fire destroyed the structures of Dreamland was there any insurance paid for the damage? A. Yes, the testimony before the commissioners was given that the amount was collected from the insurance companies.

Q. What was the amount, \$398,000? A. That was approximately the amount, yes.

Q. That was all paid to the title company who held a mortgage? A. I do not recall whether it was all paid to the title company, but some of it was.

Q. Do not the records show that the full amount was paid to the Title Guarantee and Trust Company? A. I do not remember that point. How much the amount was I do not recall.

Q. Do not the records show that? A. It does not show in this brief.

Senator Lawson.—Was this money paid on account of the fire in Dreamland? A. Yes, sir.

Q. \$389,000? A. Yes.

Q. Who was it paid to? A. That is what I was trying to find by going through the minutes.

Mr. Klein.—I quote from page 99 of volume 1, Case on Appeal, testimony of William H. Reynolds. Beginning on page 98.

Mr. Reynolds testified that the amount collected from the insurance company was about \$375,000.

Regarding the financial history of Dreamland Corporation, Mr. Lamonte, the capital stock was how much. How much common

and how much preferred? A. My recollection is that the testimony shows that there were issued \$750,000 worth of mortgage bonds and that the company was capitalized at double that amount.

Q. \$1,500,000 stock. A. Yes. \$750,000 in mortgage bonds and the rest in stock.

Q. Who were the bondholders? A. A list of the registered bondholders as of October 7, 1912, is in evidence, pages 1593-1636 of volume 3 in printed Case on Appeal.

Q. Are there any other bonds besides the \$750,000 secured against the property? A. I think the testimony shows some debenture bonds issued to the company.

Q. How much did they total? A. My best recollection is around \$600,000 or \$650,000.

Q. Were the holders of those bonds named? A. No, sir.

Q. How much of the bonds did Mr. Reynolds own? A. I do not know. I did not count it up. That list will show the number of bonds listed in his name on that date.

Q. How was the stock disposed of? A. My recollection is that the testimony shows that half of the stock was taken by Mr. Reynolds for the organization of the company and the other half was given to the mortgage bondholders as a bonus.

Q. I read from the testimony of William H. Reynolds, page 100, Case on Appeal.

"Q. How much stock would be distributed in that way, about \$750,000? A. I had the balance and also what I received as a bonus in the purchase of my bonds. I am the largest bondholder in Dreamland and I hold about \$350,750."

That indicates that he received \$350,000 of stock as a bonus on his bonds, judging from his testimony. A. I do not know.

Q. Do you know if William H. Reynolds owned those bonds when the city accepted those bonds? A. I do not know.

Q. Was Mr. Reynolds asked if he owned those bonds at that time? A. I do not recall.

Q. What did the Appellate Division say with regard to the award made for the Dreamland parcel? Did it say the award was excessive? A. It said the award for damages on parcels one, two and three were excessive and returned to make new awards.

Q. I read from page 1024, New York Supplemental Decision of Justice Mills, Appellate Division, Second Part:

"I am, however, strongly impressed that the purchase by or for the Dreamland Corporation or by its predecessors of the several tracts out of which parcels one and two were taken was at the then full value of the land and the evidence warrants no conclusion that there was up to the time of taking any such increase in these awards. Indeed, I think the awards of \$1,757,627.29 was at least half a million dollars too great as out of which parcels one and two were taken as above shown, \$517,200."

The owners of the Dreamland property retained the Surf avenue front, did they not? A. The city did not take the Surf avenue front.

Q. Does the testimony in the New York proceedings show the value of the property held by the owners per lot? A. You mean the remainder, do you not?

Q. Yes, I want the city's figures. A. Martin McCall, one of the city's witnesses, valued the part remaining in parcel one and parcel two at \$518,750. Joseph P. Day valued the part remaining in one and two at \$579,421.89.

Q. Do you know the assessed value of the property on which taxes are paid at the present time or immediately after the option was taken? A. I do not think the record shows how the assessed valuation of the entire property was apportioned between what was acquired by the city and what was not taken.

Q. You have the records since the option was taken? A. No, sir.

Q. When the city took title to Dreamland or that portion of Dreamland along the water front the land was covered with debris, was it not? A. No, my best recollection is that it was pretty well cleared up.

Q. Who cleared it off? A. I guess the fire cleared it off.

Q. Was there not a wreck on the property? A. There was an old shute-the-chute and a pier which had been burned to some extent at the time of the fire and was repaired and some jetties and bulkheads.

Q. Did not the city appropriate \$20,000 or \$30,000 to the fire department of Brooklyn to remove those obstructions? A. I do not know.

Q. The fact is an appropriation of \$20,000 to \$30,000 was made to the fire department of Brooklyn to clear off the debris at Dreamland after the city had acquired it.

The records of the bondholders show William H. Reynolds apparently the largest bondholder, others are G. F. Dobson of the Brooklyn Eagle; P. B. Purdy, who manages one of Mr. Reynolds properties, known as Westminster Heights; J. D. Fairchild, president of the Kings County Trust Company; Eugene D. Wood, a legislative agent known as a lobbyist; M. Dinklespiel, of the same profession; James F. Lord, of Chicago; John C. FitzGerald, former State Senator, 38 E. Fourth street, Manhattan; S. D. Morris, George W. Johnson, W. R. Skeng, Robert M. Pettit, J. H. Vendig, probably the sporting man; John R. Considine, hotel keeper; Arnold Rothstein, sporting man; City Real Estate Company, the holding company of the Title Guarantee and Trust Company; Joseph Huber, D. K. Billings, Timothy D. Sullivan, and others prominent in the community, William A. Engeman.

Q. Have any steps been taken following the decision of the Appellate? A. Yes, commissioners were appointed and organized in our meeting to hear the claimants.

Q. Who are the new commission? A. William C. Beecher, Thomas Callendar and Arthur Somers.

Q. Was the area of Dreamland parcel, Mr. Lamonte, acquired by the city, the same as numbers one and two? A. 313,115 square feet. That is 156.55 city lots of 2,000 square feet each.

Q. It is a little more than 7 acres? A. It is; there are 43,346 square feet in an acre. No. three, Prospect Park, Coney Island, 218,055 square feet; 109.43 city lots. There are 7.16 in parcels Nos. one and two. In parcel No. 3 there are 5 acres, and parcel No. 4, 1.7 acres.

Q. Mr. Lamonte, you represented the city in the proceedings to acquire the property owned by the First Construction Company along the line of the Coney Island Railway? A. I represent the city now in the acquisition of certain lands not now owned by the city of New York, being situated on Otsego street and other streets in the borough of Brooklyn, city of New York, to be acquired for terminal facilities and the equipment thereof and therefor.

Q. Is that for the classification yard for the proposed South Brooklyn Terminal Railway? A. That is what I understand.

Q. What was the date of the resolution authorizing the acquisition of that property? A. May 22, 1913. The resolution of the Board of Estimate and Apportionment was adopted authorizing the acquisition of the land for the terminal.

Q. Did the resolution fix the option price? A. No, sir.

Q. Was there a price at which the property was to be taken, included in the resolution? A. It was included in that resolution, I guess.

Q. Was there a resolution fixing an option price? A. I do not know, Mr. Klein, I understand there was an option similar to the one in Dreamland.

Q. What was the price fixed in this option? A. I am informed that it was \$1.30 a square foot.

Q. Does that not appear in the records somewhere? A. No, sir.

Q. Was that option taken by the Board of Estimate? A. It was received in a somewhat similar way to the Dreamland option.

Q. Is that option operated by the First Construction Company? A. I do not know.

Q. Is there any other property being taken besides that of the First Construction Company? A. There is.

Q. Who owns the other property? A. There are numerous claimants. The First Construction Company, the Estate of Wallace, the Estate of Isaac R. Robinson and Jeremiah P. Robinson, Kate Duryea, Thomas Daly, May Kelly, John Donovan, Johanna Stanton, Eliza Hinneman, Frear Bros., Inc., August L. and Charles P. Start, executors of the estate of Adolph Start, the Furman Estate, the Franklin Trust Company as substituted trustees. These are all claimants in the proceedings.

Q. How many parcels are there to be acquired? A. Including the lands between lines of streets there are 51 damaged parcels. The number run from 1 to 51, but there have been a great many numbers sub-divided and the actual number of damaged parcels taken are about about 146.

Q. What part is owned by the First Construction Company approximately? Who comprised the First Construction Company? A. William H. Reynolds.

Q. Are there stocks and bonds in the company? A. Yes; what kind of securities I do not know.

Q. What do Mr. Reynold's holdings consist of? A. I do not know.

Q. Mr. Reynolds is a director of the company? A. Yes.

Q. Did Mr. Reynolds offer the option to the city? Did some other officer offer them? A. I do not know.

Q. Do not the records show what the option consists of? A. I might state that I was not the official in charge at the time this title was taken and am not very familiar with what the records show.

Q. Do the records show what the First Construction Company paid for the property? A. Yes. They paid for the property purchased from the estate of William Beard at the rate of sixty cents per square foot.

Q. How much was acquired from the estate of William Beard? A. Well, the city did not take all that was acquired from the estate of William Beard.

Q. How much did the First Construction Company acquire from the William Beard estate? A. They acquired the property contained on the diagram shown you here.

Q. How many lots of this property has the city taken from the First Construction Company? A. The property acquired by the First Construction Company from the estate of William Beard is shown upon the diagram before me by the color blue and contains 837,678 square feet. Of that amount 618,420 square feet were taken in this proceeding.

Q. What is the total area of the property owned by the First Construction Company that is being acquired? A. 819,406 square feet.

Q. From whom was the balance — A. That does not include the land between the streets.

Q. From whom was the balance purchased? A. The city acquired 618,420 from William Beard.

Q. From whom was the balance acquired? A. That was taken in the proceedings.

Q. The balance of the property was taken in the proceedings? A. Damaged parcels Nos. 1 and 4 were acquired from the Blue-stone Realty Company.

Q. What was the area of that? A. I do not know. I could not give you that.

Q. What other company? A. A part of damaged parcel No. 6 from Kate Duryea and damaged parcel No. 22 was purchased in two sales. I have not the names of the grantors.

Q. What was the price of the First Construction Company land not acquired from Beard? A. The Bluestone Company \$85,000 for 163,921 square feet on June 20, 1910, at the rate of 51 plus cents per square foot. They bought 114,437 square feet for \$51,000 in June, 1910, from Kate Duryea at the rate of 46 cents per square foot.

Q. What was the total area of the property that is under condemnation proceedings? A. Exclusive of the streets it is \$1,308,107.

Q. Of which the First Construction Company owns 819,406 square feet? A. Yes.

Q. Had the First Construction Company acquired the Beard property before the title was vested in the city? A. Yes.

Q. On what date was that property acquired? A. It was deeded to Charles P. Houston on March 17, 1913.

Q. Do they still own it? A. I do not know what became of the remainder.

Q. Was the property of the Bluestone Realty Company taken on option? A. I do not know. I am under the impression it was, yes.

Q. Option by the First Construction Company? A. Yes.

Q. The same was true in regard to the property owned by Kate Duryea? A. I do not know positively, but I think the option covered everything the First Construction owned.

Q. Does your record date from the time the option was taken from the Bluestone Realty Company and Kate Duryea? A. The records show they were purchased by people representing the First Construction Company.

Q. Have you the names of those agents? A. The property sold by the Bluestone Construction Company was deeded to the City Realty Company. The property sold by Kate Duryea was deeded to Ann Lee Jones.

Q. Ann Lee W. Jones then transferred the property to the First Construction Company? A. Yes.

Q. Do you know the date of that transfer? A. Which one?

Q. Ann W. Jones to the First Construction Company. A. June 23, 1910. I have not got that, but it is in the records.

Q. Does the record show that Jones got the option on the Jones property? A. The record does not show. The only record of option I have is on the Beard estate.

Q. That property is being acquired as part of the Terminal Railway improvement for South Brooklyn? A. Yes, for a railroad terminal.

Q. Have you inquired into the possibility of the railroad terminal never being established? A. No, I have nothing to do with that.

Q. Have you learned that the railroad company is desirous of obtaining or is not anxious for it and does not want to have anything to do with it? A. I do not know anything about any railroad company.

Q. — is supposed to be desirous for this terminal has disclaimed interest in its construction? A. I do not know anything about any railroad company's interest in this property.

Q. One of the railroad companies said to be anxious to join in this enterprise is said to be the New Haven. I read from the American of April, 1915, telegram from Howard Elliot:

“This company has taken no interest in this enterprise. I cannot state what portion of expense railroad will pay or whether the road will be profitable to the city or not.

(Signed) “HOWARD ELLIOTT.”

The same article contains statements from President Truesdale of the Delaware, Lackawanna and Western of the same nature, also other railroad officials, dated April 8, 1915.

The question has never been brought up, has it, Mr. Lamonte, in the office of the corporation counsel that the marginal railroad scheme may be applied to cover the purchase of real estate owned by William H. Reynolds? A. I do not know what has been brought up in the corporation counsel's office, but nothing like that has been brought up since I have been there. The matter has been submitted to the commissioners for consideration in making their awards.

Q. What are their names? A. Stephen C. Baldwin, Edward F. Linton, William L. Moffatt.

Q. Do you know who the city's expert appraiser was who passed on the option of \$1.30 per square foot that the city accepted? A. William P. Rae and Bryan L. Kennelly appraised the property for the comptroller. I do not know whether it was appraised for the option or not.

Q. What were their appraisals for the city? A. William P. Rae testified in the Otsego proceeding that he had appraised the property for the comptroller as an expert that the average value in this proceeding, exclusive of damaged parcels Nos. 1, 2 and 3, was \$1.32 per square foot.

Q. Whom did Mr. Rae testify for? A. He was examined by the attorney for the First Construction Company, and after he testified for it he was examined by the attorneys for several other damaged parcels and testified for them.

Q. He was the expert for the proceedings? A. Also an expert for Mr. Kennelly, for the comptroller before the proceedings began.

Q. What was his appraisal for the comptroller? A. His appraisal for the comptroller in the case of parcels appraised by him in this proceeding was the same as the figure he gave in this proceeding. That is as far as I can tell you.

Q. What was Mr. Kennelly's appraisal for the comptroller? A. I do not know. He did not testify as to his appraisal.

Q. Do you understand that his appraisal was \$1.32? A. His was higher than Mr. Rae's.

Q. Did any one else make an appraisal before the property was taken? A. I do not know.

Q. Mr. O'Malley testified? A. He testified in the Otsego proceeding that he had made no appraisal.

Q. What would be the effect on the bonds of the Dreamland Corporation if the award of the condemnation commissioners was allowed to stand? A. You mean by that what the bonds would be worth?

Q. Yes. A. I do not know. I never figured out.

Q. What value was approximately there in the bonds of the Dreamland Corporation prior to the option that the city took?

A. I could not answer that question. That would depend on how much could have been raised upon the property. I do not know.

Q. Well, as an expert how much could have been raised upon the property? A. I do not know.

Q. You think the option price put by the Board of Estimate put considerable value in the bonds that was not there before?

A. I do not see how the option price put any value in the bonds. It took the award to do that, to confirm and sustain it.

Q. Did the award put any value in the bonds that might not have been there? A. I do not see how that could be if not finally sustained.

Q. Do you know if William H. Reynolds was buying up outstanding bonds? A. I never heard of it.

Q. Did you ever hear of that fact? A. I may have heard of it, but I do not remember it.

Mr. Klein.—All right, Mr. Lamonte, that will finish. We may need you to-morrow.

Mr. WALTER H. SHEPPARD testified as follows:

Mr. Klein.—Your full name is Walter H. Sheppard? A. Yes.

Q. You are assistant corporation counsel, Mr. Sheppard? A. Yes.

Q. In charge of the proceedings to acquire East River Park? A. Yes. I am the assistant in conducting the proceedings.

Q. Did the city take an option on that property? A. It does not appear on the record that there was an option. I have the knowledge that there was an option to purchase the award, but that was not brought out in testimony before the Commission. The present status is this: that when the Commissioners filed their preliminary report they heard objections to it and the city and the claimants filed objections to the award. The Commissioners after a hearing issued instructions for the preparation of their final report and that has not been moved for confirmation.

Q. What is the final award? A. There are several claimants. The Woodward-Brown Realty Company owns all of the property with the exception of nine or ten parcels. The award is approximately \$725,000.

Q. To the Woodward-Brown Company? A. The total award covering the awards for the other parcels is approximately \$775,000, \$50,000 in addition to the \$725,000.

Q. The city of New York took an option for \$1,300,000, did it not? A. I understand so.

Q. Then you mean to say that the Commissioners have filed a preliminary reporting of awards of \$775,000? A. They voted to. The Woodward-Brown Realty Company gave to the city of New York an agreement in writing in which they agreed to purchase the award for \$1,300,000 provided that the city paid them that sum within six months after the confirmation of the Commission's report. The option was not put in evidence by the Woodward-Brown Realty Company, neither was it put in evidence by the city. Our appraisal of the property by our first witness, Mr. McCall — Martin McCall — valued the property claimed by the Woodward-Brown Realty Company at \$476,932.50; our second witness, Mr. William Richenstein, valued the property claimed by the Woodward-Brown Realty Company at \$513,867.70. The claimants, that is, the Woodward-Brown Realty Company, by their witness claimed that the value of the property was \$1,955,733.

Q. Who was that? A. William M. Deane. By their second witness, Floyd S. Corbin, they valued the property at \$1,809,127.19.

Q. Any other experts? A. They were the only experts as to value; two for the city and two for the Woodward-Brown Realty Company. The other parcels were small — that is the principal claimant. The award of the commissioners was between \$724,000 and \$725,000.

Q. Who are the commissioners? A. Dennis O'Leary, Harry L. Gelwich and William J. Hamilton.

Q. Do I understand it, Mr. Sheppard, that the city is bound to a price of \$1,300,000 on the property? A. No, sir.

Q. But that is the value the Board of Estimate put on the property? A. The claimants submitted that value to the city on an option. Not on an option, but an option to any purchase that might be made. They said if the city did not take advantage of this offer it would be closed. They just presented this to the Board of Estimate for \$1,300,000. It was executed by the Woodward-

Brown Realty Company, an unilateral proposition, only one property to it. It did not bind the city.

Q. The Woodward-Brown Realty Company is affiliated with the Rickert-Finlay Company, is that correct? A. I do not know.

Q. The directors are William H. Woodward, Wilson R. Brown and Edward J. Rickert. And the Finlay-Rickert Company, who are their directors? A. They did not appear in the proceedings.

Q. Is it true that the Rickert-Finlay Company held title in the property and the Woodward-Brown Realty Company held deed in the property? Did not the Woodward-Brown Realty Company have a \$720,000 mortgage on the property? A. No, they had mortgages on other property.

Q. How large is the property taken? A. Fifty-six and one-half acres.

Q. Did not the Woodward-Brown Company have a mortgage on 130 acres? A. I do not think they held any mortgages at all. There was one held by Juillard and one by the Dime Savings Bank of Brooklyn and I do not just remember who held the other mortgage, but I do not think the Woodward-Brown Realty Company held a mortgage on the property at all.

Q. Do the tracks of the New York Connecting Railways run over this property? A. No, that is excluded from the Board of Estimate. The park is right alongside of the Connecting Railway. It is three blocks.

Q. Between Potts and Ditmars? A. In the block between Potts avenue and Ditmars avenue the New York Connecting Railroad runs, but that was expressly excluded from the proceedings and was not acquired for park purposes.

Q. Was this part of the park situated on the East river? A. Three thousand feet on the East river opposite Ward's Island.

Q. About opposite what street? A. About 99th street.

Q. How can the people of Manhattan get to the park? A. They could go up the east side to 59th street bridge and take a trolley out to Astoria. After the Second Avenue Railroad is put into operation they can go out on Ditmars avenue and go nine blocks north to the park.

Q. At the present time the park is inaccessible for people of Manhattan. Well, it was two years ago, was it not? A. Well, it

is accessible, of course, but I would not call the facilities for transportation the best in the world.

Q. How is the development around the property? A. Well, to the south there is quite a development, to the east it is small, and to the north there is a small development.

Q. Do your records show what Woodward-Brown paid for that parcel of property they are selling to the city? A. It does not show it in any direct manner. By that I mean there was no direct testimony as to what they paid for it.

Q. What does the record show in regard to what the Woodward-Brown Company paid for it? A. We assumed from the witnesses' testimony that they paid \$300,000 for it.

Q. When was the purchase price paid? A. About 1904, I think.

Q. The total of those tracts were how many acres? A. The total area of the tracts for which \$300,000 was paid? That was what they paid for the property included in the park areas. That area the city has acquired.

Q. And they sold part of that to the New York Connecting Railway? A. Yes.

Q. What was the price? A. \$100,000, I think.

Q. When was that paid? A. About 1907.

Q. What was the assessed value of the park according to the city taxes? A. \$565,000.

Q. The estimate for what year? A. 1913.

Q. What was the estimate previous to that? A. I think it was the same for a year previous to that.

Q. Have you the figures for the assessments since 1910? A. No, sir, they are not with me.

Q. Have you the appraised value for 1913 — the assessed value for taxing purposes? A. I have not it here. It can be obtained at the tax office in Queens. In 1913 it was \$564,950, for 1914 it was \$566,000, in 1912 it was \$573,350.

Q. Was this parcel of property offered to the city before the proceedings began? A. There were former proceedings that were discontinued in 1907.

Q. Were there any appraisals made at that time? A. Yes.

Q. What were the appraisals? A. I think around \$600,000.

Q. Did Mr. McCall appraise the property at that time on behalf of the city? A. Yes.

Q. What were the appraisals? A. I think around \$600,000.

Q. That is before the New York Connecting Railway went through. Did Mr. McCall appraise the property at that time? A. Yes, but never testified.

Q. Did Mr. Ryan appraise the property at that time? A. Yes, but never testified. I think Mr. Ryan was a little higher than Mr. McCall.

Q. How did they come to make their figures? A. They were employed by the city as experts, but it was discontinued before the city's experts were called.

Q. Was an appraisal made by Mr. O'Malley at that time? A. I do not know of any appraisal that Mr. O'Malley ever made.

Q. Did Stewart Hinchman make an appraisal on the property? A. I do not know, sir.

Q. Have you inquired into the status of the mortgage on the parcel of property that was being acquired, Mr. Sheppard? A. Why, the report shows the award subject to about three mortgages.

Q. Total, how much? A. The mortgages covered other property than that of the park. I should judge they amount to eight or nine hundred thousand dollars. I am not positive about that.

Q. Covering how large an area? A. Well, a great deal more land than is in the park area, I should judge. The mortgage covers sections, portions of the property. There is a separate mortgage on different parts of the property that was formerly owned by the East River Land Company.

Q. Was the interest paid on those mortgages prior to the date of the title vested in the city? A. I could not tell you. The mortgages are a lien on the property and are subject to the mortgages.

Q. Were there any proceedings to foreclose the property? A. None that I know of.

Q. What is the date of the deed from the East River Land Company to the Woodward-Brown Realty Company? A. October 15, 1910.

Q. When did the Board of Estimate pass the resolution to acquire the property? A. July 31, 1913. The first resolution.

An amended resolution was adopted in the proceedings to acquire title to East River Park on August 28, 1913.

Q. The city claims that property was dedicated to the city several years ago, is that correct? A. We claimed before the Commission at the beginning of the proceedings before the testimony as to values was taken that the property was subject to an estimate in favor of the public for use as a park.

Q. The entire tract? A. The entire part of the property acquired for a park, except those several parcels owned by others.

Q. And that is a very small area? A. Yes, a small area.

Q. What was the city's basis for its contention? A. The basis for contention is the fact that the Rickert-Finlay Realty Company subsequent to their purchase of the property in 1905 were inducing purchasers to purchase lots and exhibited a circular or pamphlet entitled East River Heights, 2,470 lots, 3,000 feet frontage on the new East River Park, that this map was similar in all respects with the property map filed in the office of the clerk of the county of Queens, except that the map filed in the office of the county clerk of the county of Queens did not show the portion acquired for park purposes in this proceeding as a park. They showed it blank where the present park is located, but they distributed this circular and pamphlet showing the park area and put in shade trees and winding walks and paths, and the purchasers of lots from the Rickert-Finlay Company or the East River Land Company were given copies of these pamphlets and circulars, and that the deeds given to them referred to this property map by lot and block, and that the fact that their lots faced upon the park induced them to purchase. That is a question of law that will have to be threshed out when the case comes up for confirmation.

Q. Did the Rickert-Finlay Company own the East River Land Company? A. I could not tell you.

Q. Have you a list of the directors of the East River Land Company? A. No, not here.

Q. Do you not understand that they are the same directors and the Rickert-Finlay Company? A. I understand the Rickert-Finlay Company are interested in the East River Land Company, but whether it was the same people I do not know.

Q. Did these people put out these circulars to deceive the city by failing to make a proper dedication? A. I won't say that. I

am only interested in the legal effects of that action. I am not in a position to say what motives prompted them.

Q. How much property was sold by the East River Land Company prior or as a result of this park dedication? A. I am in no position to say that every man who purchased a lot purchased it for that reason alone.

Q. How many sales of lots were made? A. I think not over sixty or seventy lots were sold.

Q. At what price? A. Well, they got a price.

Q. Did they get more than \$500 a lot? A. More than that, I understand. They got as high as \$1500 a lot.

Q. Are there a thousand lots in the parcel acquired by the city? A. Not of the fifty-six acres. About ten acres is under water and I should judge that ten acres is in the bed of streets and that the actual number of lots on the subdivisions, making provision for street facilities, would amount to about 550 or 600 lots at 15 by 100 feet in dimensions.

Q. Have not the streets been dedicated to the city? A. Potts avenue, which runs through the property, was acquired by the city by a street opening proceeding.

Q. Purchased by the city? A. By a condemnation.

Q. Have any other streets running through the property been dedicated to the city? A. Old Shore road, which was an old military road in use for 100 years, was dedicated. Wolsey avenue was laid out in 1888 between Barclay street and Shore road.

Q. Are those city streets? A. The legal title is not in the city. There might be a public easement on Shore road. There is some question whether there is a public easement in Wolsey avenue between Barclay street and Shore road, but in my opinion Wolsey avenue is burdened with a private easement in favor of the lot purchasers in the Wolsey map.

Q. Was that property formerly known as Wolsey? A. A portion of it.

Q. Who were the attorneys who appeared for the East River Land Company or Woodward-Brown Company? A. Olvany, Russell & Ingle are the attorneys for the Woodward-Brown Company, the owners of the property to-day, with the exception of the owners of those damaged parcels, eight or ten in number.

Q. Have you read all the briefs of the East River Land Company or the Woodward-Brown Company in this proceeding? A. Yes.

Q. Do you find a brief submitted by Lamar Hardy? A. Yes.

Q. What was the purpose of that brief? A. You had better ask Mr. Hardy that. He was counsel for the Woodward-Brown Realty Company conjointly with Olvany.

Q. Is he of the Olvany firm? He was the actual trial attorney? A. Yes, with George E. Blackwell.

Q. Is he of the same firm? A. He was the actual trial counsel with Mr. Hardy, yes.

Q. Has Mr. Hardy appeared in the proceedings you have been conducting for the city? A. Yes, he has submitted a brief.

Q. When was that? A. In April or May, 1915.

Q. What was the status of the case at that time? A. Before the commissioners he submitted a brief.

Q. What is the status of the proceedings to-day? A. The bill of costs will be presented to the Supreme Court in a short time, and after the bill of costs is taxed the report will be moved for confirmation.

Q. Have the commissioners completed taking testimony? A. Yes, over a year ago.

Q. And the report has not been sent to the court for confirmation? A. No, there is matter before Justice Cropsey at the present time, an application of the commissioners for an extension of time in which to complete the report.

Q. And has that extension been granted? A. Not yet. We are waiting for the judge's action on the motion.

Q. You have no copy of Mr. Hardy's brief, have you? A. No, sir.

Q. Does the Rickert-Finlay Company own the adjoining parcel of property? A. I think they sold out in 1910 to the Woodward-Brown Company.

Q. The Woodward-Brown Company owns considerable property adjoining the property? A. I understand so.

Q. Has there been any activity in real estate sales since the proceedings began? A. Not of similar property.

Q. According to the newspapers the resolution adopted by the Board of Estimate the newspapers understood the city was permitted to pay a maximum of \$1,300,000 for that property, taking advantage of whatever reduction from that price the commission awarded. Is not that the way the matter stands as far as the city is concerned? Is the city not committed to a maximum price of \$300,000 for that property? A. I understand the option to purchase meant that if the commission awarded over \$500,000 that the Woodward-Brown Realty Company would accept \$1,300,000 if that sum was paid to them within six months after the confirmation.

Q. That is what I understand. A. Yes. Whatever the award is. If the award is made now the city will pay \$715,000 to Woodward-Brown Realty Company and \$50,000 to the other owners.

Q. But the option in the case of East River Park was just the same as the option in Dreamland property, was it not? A. I never saw the option in Dreamland.

Mr. JOHN A. CARNEY called to the stand.

Examination by Mr. Klein:

Q. Mr. Carney, you represented the city as assistant corporation counsel in the Seaside Park proceedings? A. I did.

Q. That proceeding is closed? A. It is.

Q. Who owned the property? A. The Neponset Realty Company.

Q. Is the Neponset Realty Company affiliated with the Realty Associates? A. So I understand.

Q. To what extent? A. It was the owner of 75 per cent of the stock of the Neponset Realty Company.

Q. The Realty Associates owned that stock? A. Yes.

Q. How large is the area? A. Approximately 250 acres.

Q. What was the award? A. \$1,250,000.

Q. Had the city accepted an option on that property? A. A so-called option.

Q. For what amount? A. \$1,225,000.

Q. With interest? A. Well, the option carried option from a date in August, 1911, and in addition the city if compelled to accept the option price would have had to pay the taxes for that

year and also the reasonable disbursements of counsel for the property owners in trying the cases.

Q. And the award saved the city how much? A. I think it was figured out around \$60,000.

Q. Who is the president of the Neponset Realty Company? A. Johnson.

Q. Is Mr. Greaves an officer of the company? A. He was, at the time of the proceeding, the vice-president of the company.

Q. Also vice-president of the Realty Associates? A. I believe he was an officer of the Realty Associates.

Q. Who were the experts for the owners on that proceeding? A. Lewis H. May, Bryan L. Kennelly, Frederick J. Lancaster and William H. Reynolds.

Q. What were their appraisals? A. May's was \$1,960,450, Kennelly's \$1,982,707, Lancaster's \$2,343,600, Reynolds' \$1,986,888.

Q. Who were the city appraisers? A. H. E. Hanes, Andrew McTeague, Louis B. Sharp and Maximillian Morgenthal. Hanes' was \$755,000, McTeague's was \$775,763, Sharp's was \$620,000, Morgenthal's was \$744,000.

Q. On what date did the city acquire the title to this property, March 14, 1912, by a resolution of the Board of Estimate? A. Yes, the resolution provides that the title should vest in the city on the filings of the commissioners, and that was the date of the filing of the others.

Q. Is that property accessible to the people of Manhattan? A. Well, as I understand it the fare at that time was almost prohibitive for poor people.

Q. About fifty cents a round trip? A. So I understood.

Q. Right to the property? A. Well, they could get to Rockaway Park by Rapid Transit and then they could go at that time from Rockaway Park to Belle Harbor and then walk to the park about a half mile.

Q. And the so-called park consists of streaks of sand on the west side of Rockaway? A. There was no structure on that area. There was at the time it was vested in the city.

Q. The only way to get there was by boat from Jamaica Bay? A. I understand it could be reached that way.

Q. Was that property offered to the city prior to this acquisition? A. Yes, I believe so.

Q. How long ago? A. Well, I think the negotiations started as early as 1904.

Q. Who owned the property at that time? A. I think the Hatch estate.

Q. And what was their offer? A. That I do not recall.

Q. Well, the Hatch estate not only owned the property just acquired but also owned a hundred acres or more now developed as Neponset? A. Yes.

Q. Do not your records show the price at which that entire tract was offered to the city? A. As I understand it was offered at a much lower price than the 250 acres which the city actually acquired, but I do not recall the exact price. I think the minutes of the Board of Estimate and Apportionment will show it.

Q. The total was 350 acres of property offered at that time? A. So I understand.

Q. The West Rockaway Land Company was successor to the Hatch estate, and the Realty Associates acquired the property from the Rockaway Land Company? A. The Neponset Realty Company acquired their property from the West Rockaway Land Company.

Q. That 350 acres acquired by the Neponset Realty Company includes that property purchased by the city and the city acquired their property from the Neponset Realty Company? A. Yes, by condemnation proceedings.

Q. Was William H. Reynolds a stockholder in the Neponset Company? A. I think he swore he was not.

Q. Did Mr. Reynolds qualify as an expert? A. He did.

Q. What other property had he appraised? A. He did not appraise any property in that immediate vicinity, but he was active in the development of Long Beach, in which company he was a stockholder, and his testimony showed that he was apparently qualified to testify as to the value of the property.

Q. Who offered the city the option on this property? Was it the president, Mr. Greaves? A. No, it was the Neponset Realty Company itself who made the offer. It was signed by Mr. Greaves as vice-president.

Q. Has the property been improved since being acquired by the city? A. I think a hospital has been erected on it.

Q. Just a small portion of it? A. I never was down there. I could not say. That is, not since the proceedings were completed.

Q. You understand, of course, that the property is just as inaccessible to-day as it was three years ago when the city took its option? A. I think the trolley road did not extend as far west at that time as it has since then.

Q. You mean the trolley operates to Seaside Park? A. I think they have a franchise to Belle Harbor.

Q. In other words, it is extended a mile farther? A. I think so.

Q. When this option was taken who made the appraisal for the comptroller or the Board of Estimate? A. I do not know.

Q. Was there an appraisal made? A. I think there was from the minutes of the meeting, but the papers did not disclose the names.

Q. The minutes of the Board of Estimate say that the property was appraised for the amount of the option? A. In the extract of the minutes of October 19, 1911, page 285, a communication from the comptroller states there had been an appraisal made, and it was reported to the committee that \$1,225,000 was a reasonable amount for the property for park purposes.

Q. Who was the committee? A. They call it the special committee.

Q. No names given? A. No.

Q. That is President McAneny told Mr. Mitchel and Mr. Prendergast? A. I do not know the names given.

Q. I have a statement that on March 12, 1906, Edward Hatch agreed to sell for \$1,000,000 to the city property at Rockaway Beach. The city refused to accept this proposition. Is that a fact? A. That is as I recall it from the records. As I recall it there was something like that stated.

Q. Did the city oppose the award of the condemnation commissioners? A. It did, on the ground that the award was excessive.

Q. Were figures presented to show how much in excess of the actual value of the property it was? A. We contended that the figures presented by the city represented a fair market value.

Q. And the award was confirmed? A. The award was confirmed.

Q. What was the assessed value for taxes? I mean for the 246 acres for 1912? A. About \$974,000.

Q. In 1911? A. In 1911.

Q. This property was joined with the 100 acres owned by the Neponset Realty Company as one tax parcel? What was the proportion? A. It was estimated that the tax valuations of the property for 1911 afterward acquired was \$490,000.

Q. Have you any figures? A. No, sir, but reckoning from previous years it was the same.

Q. Was it assessed by acres in 1912? A. Yes.

Q. You say Mr. Lewis makes that report? A. He made a report August 28, 1911, to Mayor Gaynor in which he said that information from the Department of Taxes and Assessments as to land value per acre, which was the basis of the assessment that the total of such value included within the proposed park was \$490,000 as nearly as he could make out.

Q. He is chief engineer of the Board of Estimate? Was he requested to make such a report? A. He assumed it to be his duty under the requirements of the charter.

Q. There are no streets through this property, are there? A. There is one street, Washington avenue, which runs through the property.

Q. But there are no other streets? A. None had been laid out at that time.

Q. That is not paved, is it? A. One hundred feet macadamized. It runs parallel to the ocean and the bay and half way between it approximately.

Q. Has the city rented any part of this property? A. I do not know what disposition has been made of it since the proceeding has been confirmed.

Adjournment to June 29, 1916, at 11 o'clock a. m.

JUNE 29, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

MORNING SESSION.

Meeting called to order at 11:30, Senator Thompson in the chair.

JACQUES S. COHEN, being duly sworn, testified as follows:

By Mr. Moss:

Q. Where are you now employed? A. J. S.

Q. You were formerly employed by Andrew Freedman? A. Yes, sir.

Q. Did you have charge of his bank accounts? A. I looked after them.

Q. What work did you do for Mr. Freedman? A. General secretary.

Q. When did you see Mr. Freedman before he died? The last time before he died? A. I should say the day before.

Q. Did you see him down in New Jersey, where he was living at that time, or where did you see him? A. He died in New York.

Q. He died in New York. Well, had you seen him at his country home? A. I went down with him.

Q. Where was that? (For the record.) A. I used to go down with him every week.

Q. Where was it? A. Red Bank.

Q. He built a house there, didn't he? A. Yes, sir.

Q. Did you take any papers down there for him? A. What do you mean?

Q. Did you take papers there? A. I used to take the mail down every morning.

Q. Any other papers? A. No.

Q. Are you sure? A. Positive.

Q. Were any papers examined down there between you and him? A. Nothing outside of the regular correspondence.

Q. Just the regular correspondence. Weren't there papers down there with reference to Interborough Rapid Transit matters and other business matters? A. Not that I know.

Q. You didn't see them if they were? A. No.

Q. Did you know what papers were in the white safe in the bathroom? A. No.

Q. Did you know there was a white safe there? A. Yes.

Q. Did you know what was in the white safe? A. No.

Q. Weren't you his confidential clerk? A. Yes.

Q. You handled many confidential matters for Mr. Freedman?

A. All the confidential matters that a secretary would handle.

Q. When was that safe put into the bathroom? A. It was always there.

Q. What became of the papers in the safe? A. I don't know.

Q. Were you in the house when the safe was opened? A. No, sir.

Q. Did you see any papers that had come out of the safe? A. No.

Q. Did you see any papers showing the relations between Mr. Freedman and Mr. Croker? A. No.

Q. Did you know of stock that Mr. Freedman had taken for Mr. Croker? A. No.

Q. Not a thing about it? A. Not a thing.

Q. Did he ever tell you anything about Mr. Croker's interest in the Interborough? A. No, sir.

Q. Wasn't there an account kept which showed Mr. Croker's account in the Interborough? A. Never.

Senator Thompson.—You were the bookkeeper? A. When?

Senator Thompson.—How long? A. Six years, since the beginning of 1911—I should say five years.

By Mr. Moss:

Q. Did he have any bank account in Europe? A. No, sir.

Q. Did he have any safe deposits or other kind of vault in Europe, in any part of Europe? A. No, sir.

Q. Did you ever go abroad with him? A. No, sir.

Q. Did you ever meet him abroad? A. He was never abroad when I was with him.

By Senator Thompson:

Q. During the six years you were with him he was not abroad with you? A. No, sir.

By Mr. Moss:

Q. Were there transactions which were never entered on the books? A. No, sir.

Q. Private transactions; the handling of money? A. I don't quite catch what you mean. All transactions were in the books.

Q. In some shape. But there were many checks drawn to bearer, endorsed by you, in cash aggregating many thousands of dollars. Was there any account showing what was done with those moneys represented by checks that you cashed? A. That was living expenses.

Q. Were those entirely living expenses? A. Yes.

Q. As far as you know, if there was any special purpose in those moneys, you don't know it? A. Yes, I should say so, because I drew them regularly for his living expenses.

Q. Weren't some of those moneys used in buying of securities in connection with other people? A. No, sir; that is, as far as I know.

Q. Weren't some of those moneys used for loans to other people? A. No, sir.

Q. Did you know of loans to other people that were made through checks that were cashed? A. No, sir.

Q. Loans to newspaper men? A. No, sir.

Q. Loans to public officers? A. No, sir.

Q. Never knew of any such thing? A. No, sir.

Q. In any check form whatever? A. Otherwise than to bearer.

Q. In that case I suppose it would be to order of the person to whom it is made. Did you know John Mackaye? A. Never.

Q. There, for instance, is a check dated December 24, 1912, drawn to Bearer, \$550.00, marked "Personal" and endorsed "Cohen." Here is another, November 1, 1912, for \$1,500.00, the same way. You may examine them. Now, all checks that were drawn like that, did you understand they were for living expenses? A. Yes, sir.

Q. Have you checks with you which were drawn to bearer and bear the endorsement of Mr. Cohen?

Mr. Garrick.— We have a Mr. Sherman, and he has the things called for in the subpoena.

Q. Are there such things called for in the subpoena?

Mr. Garrick.— I believe there are.

Q. Will you kindly produce same? Please allow your witness come forward?

Mr. FREDERICK T. SHERMAN, JR., takes the stand.

By Mr. Moss:

Q. Will you kindly produce the checks of Andrew Freedman, deceased, drawn to bearer and endorsed by Mr. Cohen? (No answer.)

Q. You are representing the New York Guaranty Trust Company? A. Guaranty Trust Company of New York.

Q. As one of the executors? A. Yes, sir.

Q. Will you kindly produce those checks? A. I must decline to give them up.

Q. I have asked you for the ones I wish. A. If you will specify distinctly —

Q. You hold in your hands a bunch of checks which your associate handed to you after I designated what I wanted. I want the checks drawn to bearer, endorsed by Mr. Cohen.

Mr. Garrick.— The witness is instructed to testify according to the rules of evidence. If you ask for checks he will produce them. You describe the checks.

Mr. Moss.— Are there in your hands checks drawn to bearer and endorsed by Jacques S. Cohen?

Senator Thompson.— You produce those checks.

Mr. Garrick.— We won't turn them over.

Senator Thompson.— What will you do?

Mr. Garrick.— He will testify to them himself.

Senator Thompson.— Of course, that is a considerable concession for the Guaranty Trust Company to make to this Committee and you know yourself and so does the witness and so does your company that you are not acting according to the rules of evidence. You know you are not and you are simply taking advantage of a lot of child's play here that you expect the public and the city of New York to consume because you are a large institution with large amounts of money deposited in your vaults. You know

yourself that if you were subpoenaed before a Court and asked to produce a check described as far as Mr. Moss has described it, you would have to produce it.

Mr. Garrick.— I might as well explain to you right here —

Senator Thompson.— You can conduct yourself in any way you see fit, because I am going to acknowledge to you that this Committee is powerless to make you do anything here that you don't want to do, because we have only two days and we can't enforce our order in two days. I want that perfectly clear. But I want you to stand clear and I want the Guaranty Trust Company to stand clear before the public and the city of New York.

Mr. Garrick.— The Guaranty Trust Company has stood clear right along and has permitted a search through our papers. You have in your possession a memorandum of every check of that description you now call for, which has been made pursuant to agreement with your Mr. Morse. He has all the information he wants and Mr. Sherman has the information for you.

Senator Thompson.— You know we will get it all.

Mr. Moss.— I am advised that the statement just made is not accurate. I have been many times advised by Mr. Morse that he was permitted to make an examination up to a certain point, when he was stopped, and the result of that examination which has been put in my hand, I have also been warned by Mr. Morse, was only fragmentary. When he began to get to matters he wanted, the examination was stopped.

Mr. Garrick.— May I state, for the purpose of the record, that the examination of Mr. Morse covered all the checks and vouchers and pass books of Mr. Freedman.

Mr. Moss.— Mr. Morse tells me there were books that had every evidence on their outside of being connected with Freedman's bank transactions which he was not permitted to look into.

Mr. Garrick.— I don't know what Mr. Morse might have in his mind, Heaven knows, but he was permitted to see every returned voucher in our possession and every bank and pass-book of the late Andrew Freedman.

Mr. Moss.—The Guaranty Trust Company is in its own pilory, constructed by itself, and they have anchored themselves on it. Mr. Morse tells me that the memorandum is fragmentary and does not begin to show the Freedman bank transactions in full. I call now specifically for checks drawn on the Bankers Trust Company to bearer, beginning October 30, 1912, and numbered 29, 30, 31, 32 and 33.

It will take just a moment to identify those checks and then I will take the balance of them up after Mr. Belmont has testified.

Mr. Cohen leaves the stand.

Mr. Moss.—I suggest, gentlemen, that you know what I am going to call for right from this list, and if you will be picking out checks drawn to bearer and endorsed by Mr. Cohen, that will be using up the time profitably.

Mr. BELMONT takes the stand, and having been previously sworn, testifies as follows:

By Mr. Moss:

Q. Mr. Belmont, did you sell the New York and Queensboro Railroad to the Interborough Rapid Transit Company? A. I bought it for the Interborough.

Q. Didn't you sell it to them? A. Well, yes; but I bought it for them.

Q. From whom? A. The stockholders of that time. I don't recall.

Q. You mean to say, if I understand you right, that though in form you sold the New York and Queens County Railroad to the Interborough, it was with the understanding that you should buy it for them and transfer it to them? A. That is what I did.

Q. You didn't have a personal interest in the New York and Queens County Railroad? A. No; it was just bought and sold for whatever it cost.

Q. You made no profit? Gave it to them just as you got it? A. Yes.

Q. Well, I guess that disposes of all questions I was going to ask you on that line. It appears that that railroad was pretty heavily capitalized and seems always to run at a loss, but I sup-

pose you gentlemen thought you needed it for your system. A. Yes; that was bought in connection with the construction of the 42nd Street tunnel.

Q. In the Interborough Company, weren't your relations with Mr. Freedman rather confidential? A. I think not; no.

Q. Didn't you discuss plans and policies with him rather than with the other men? A. No, not at all.

Q. Didn't you discuss the matters that related to the Inter-Met and its relations with the Interborough more than with other persons? A. No.

Q. Now, just look at that letter signed by you and addressed to Mr. Freedman and see if it does not indicate that you and he had a sort of agreement between yourselves. A. Well, I don't recall, but that was probably because I had not had a chance to see him at all. You see, I refer to having discussed the matter with Mr. Shonts.

Q. Well, were shares of Inter-Met given to persons by Mr. Freedman with your knowledge — to persons who were more or less helpful to Interborough plans? A. I do not quite understand the question.

Q. Were there shares of the Inter-Met given to persons by Mr. Freedman with your knowledge — persons who were more or less helpful to Interborough plans? A. No; I didn't question his interest whatever.

Q. He never told you? A. I became familiar with those to whom stock was transferred, but what you mean — whether I was familiar with the fact that he took this person or that person in for the interest of the corporation —

Q. Yes. A. No.

Q. Well, I will accept your answer, Mr. Belmont, without working around any point. I had an understanding with you that I'd try and ask you direct questions and I'd assume your answers were intended to answer the question accurately without regard to its form. A. What you convey to me is that he got distributed stock for purposes of political influences and that I had nothing to do with.

Q. The reason I ask that is, having had some knowledge of public matters in New York, and what corporations have had to

do sometimes, and thinking it might be possible that such things had been necessary with the Interborough, I want to trace it if I can. If you say it was not done, I will take your answer. When did Mr. Morgan become the recognized financial agent behind the Interborough and begin handling their financial matters as a banker? A. When they agreed to make the investigation for which that commission was paid.

Q. Weren't there things before that? Mr. Morgan intimated that he had floated some notes before that. A. Well, that may be.

Q. Mr. Morgan said his name became connected — to the knowledge of the banking people of New York — with the Interborough matters before this big bond transaction came off. A. Well, the house was interested at the very outset.

Q. There was a time when your house was the financial representative of the Interborough. A. We are the financial agents now. But in connection with the larger transactions, to such degree as we participated, they have been the managers.

Q. There was an announced policy to have an entirely new, large and responsible firm in this bond transaction. I think, I read an announced policy of the company to have a large, representative, well-known firm interested or standing for this banking proposition which nobody could say was closely identified with the directorate of the road. Was there such a policy? A. There was no such purpose as that because they were not identified with the management of the road.

Mr. Shuster.—During the years 1908 and 1909, and before any of the large bond issues were created, Morgan & Co. sold five million of the bonds — the then first mortgage bonds — of the Interborough Company. A. Yes.

Mr. Shuster.—So that they were identified with the Interborough before the dual contract bonds were marketed? A. They were stockholders.

Mr. Moss.—Oh, they were stockholders? A. They were interested from the very outset.

Mr. Moss.—Ordinarily that bond transaction which Mr. Shuster has spoken of would have been in your hands. A. Oh, no. On the contrary, such negotiations as were conducted before were

with Lee, Higginson & Co. and William A. Reed & Co. They were the ones that floated the early notes and we merely participated because we had to. We avoided that as much as possible.

By Mr. Moss:

Q. William A. Read & Co. were associated with Lee, Higginson & Co., weren't they? A. Yes; the three houses: our house and Lee, Higginson and William A. Read, as I remember, were those who issued that first set of notes during the period of construction.

Q. Well, now, Mr. Belmont, I want to come down and travel as quickly as possible; come down to the subway negotiations and carry them down to the execution of the dual contract and get any knowledge that you have upon the details. I suppose as long as the extensions of subways were discussed your company had an eye upon the extensions to their system and an eye to their interests in those extensions. You talked about them and discussed them, of course. A. I have stated before, and if you will permit, I will state exactly what the position of the company was from the outset. When the present Rapid Transit Company was laid out, it was laid out on the lines of least resistance, and that is why it took that tortuous line, crossing under Central Park and going to the West Side and coming down the way it has. Such transit interest has existed, of course; naturally whether they were successfully opposing it or not, as a matter of fact, competition which at least would have been brought about by the construction of a side line such as is now being constructed, would have been detrimental.

So that, when the question of extensions came up, even during the progress of the work, you will find in the record of the full commission, a hearing at which we claimed that it was part of the understanding when we undertook the construction of the subway, that the system would eventually be completed under what was considered the best contract, contract No. 1, the original form.

I think you will find there where Mr. Wickersham, addressing them, said that we have the right to expect that of them because the tendency then was to put that into competition and we claim, as I have stated myself, that we also look upon the system as being incomplete without a West Side extension and without an East Side one. In other words, both sides of the city. Understand that

at focusing at the foot of the city these extensions were very logical. We also offered to do it and that went on until after — that is the actual position we took up to the time the Ellsworth bill was passed and stopped everything. After that was repealed, the negotiations began again in 1907, and during that period it went back and forth in such a way —

Q. We have in evidence the various steps, but from back to the time that you mentioned, of course your concern, your association, was interested. I want to know if you didn't recognize the fact that in the campaign of 1909, the candidates who afterwards were elected put themselves squarely against your company's interests? A. Publicly. Well, I think that almost every administration has.

Q. But that is not the question. Did you have it clearly in mind that Mr. Gaynor and Mr. Prendergast, or Mr. Mitchel or Mr. McAneny and the others, who afterwards were elected, put themselves squarely for the municipal construction of that road, not only that but as such were antagonistic to the Interborough Company? A. I don't know that I'd say that last — endorse your last statement. They disagreed with our views.

Q. Exactly, but did you take notice? It is interesting to us to know whether you actually took notice or whether you just passed it off as mere campaign vapor. Did you take notice of Mr. Gaynor's article, called "The Looting of New York," published in Pearson's Magazine? A. I think I remember that, but, Mr. Moss —

Q. If you want to make haste just stick to my questions and I will try to make them bring out the story and it will take just half the time. In that article in Pearson's there was a direct — might I say a vicious — attack made upon the Interborough and linking it in with the Metropolitan which was attacked in an awful way. You remember that? A. I think so.

Q. Did you consider that as a serious opposition, or did you look upon it merely as campaign talk? A. I considered any attack by a public official as detrimental to the interests of the company.

Q. You saw that the men on both sides — the platform of both parties — men on both tickets — were lined up against the desires of your company. Did you take that into consideration? A. It was a good way for acquiring a political cap for anybody at that time.

Q. Did you look upon these men as probable enemies of your system? A. Not any different from any public men at that time who were seeking political popularity in New York.

Q. But, Mr. Belmont, Mr. Gaynor had a reputation for being a courageous, able, independent man who had made his way by being independent and by being true to his public announcements. Now, when he made those public announcements, a man with a strong character, who had always won his way, didn't you put him down, considering all the interests of your railroad, as an enemy? A. No, not in that sense at all. Everybody was laboring under a misconception of what were the real interests of the city.

Q. Whether there was misconception or not, did you take his words as representing his real thought and real purpose? A. As they existed with his information at that time; yes.

Q. Well, now, Mr. Prendergast had held office before; he is at least forceful in speech, and is at least forceful in creating an impression sometimes among his associates that he is a leading spirit. Did you think that he meant just what he said and that he would do what he announced he would do? A. Well, I don't know that I gave Mr. Prendergast's position as much thought as that; no.

Q. You didn't consider him so likely to stand in his position as Mr. Gaynor? A. I didn't know him as well, but I considered him an honest official and I did not suppose that he was prompted by any ulterior motive other than his opinion as he had then.

Q. Here is an extract from one of Mr. Gaynor's speeches. It is short and hasn't been referred to before:

“ October 20th, 1909.

“ My friends, we are going to build subways, for the city is going to build three subways. We do not intend that a single subway or franchise for it shall be passed over to any one of those men who erect your street railways over here, to have bonds and stocks piled up on them, sold out to the community at the highest figure and then the road thrown into bankruptcy, the same as your roads are over here to-night and have been for three years — not a dividend paid on them meanwhile. Oh, ye men of Manhattan, I fear you do not always know what is occurring right among you, the most

scandalous chapter in the history of New York, and it has evoked very little public indignation. The men that did it are said to be good men. They hold their heads high. They attend church. Why, according to the newspapers, they even build churches and altars. But I say unto them that so long as the money which they robbed the people out of in this transaction — so long as the 7,000 and more maimed people here walk these streets legless and armless or hurt otherwise, remain unpaid for the hurts that they received, all their wealth and all their churches will purchase less forgiveness for them on the Great Day than a pebble in the grave of the least one of those they have so brutally wronged.

Judge Gaynor told of the throwing of the street railroads of the city into bankruptcy, and said:

“ There is the history of it, my friends. Not even the judgments and claims for injuries, as I have told you, paid; nothing paid; everything gone; and these are the people that have held this city up for over six years, because they cannot get their clutches into the building of your subways. By the Eternal, if Mr. Moore and Mr. Galvin and myself are elected to office, and come into the Board of Estimate and Apportionment, which has control of that thing, and we have a majority vote there, if that happens, by the Eternal, they never, will never get their clutches into the building of the subways.”

A. You are speaking of the surface lines.

Q. He's speaking about the surface line people's getting their clutches on the subway. In the article in Pearson's he connected your Interborough Company directly with these street interests through the Inter-Met and so on. He worked it all out in that article that was printed and illustrated with photographs of Richard Croker, Mayor Van Wyck and others that at that time were more or less held in unpleasant recollection by some portions of the community to which, of course, the article was addressed. A. Might I say this: I'd like to put on record, as a matter of fact, that the city paid its contract price for the construction of the subway. Do you understand? Paid its contract price for the subway

and only issued the number of securities required under their contract. But a great deal more money was put into the subway, and it was represented by that.

Q. You have already got that in. Let's keep on the short route, Mr. Belmont. Now, did you notice that after these gentlemen were elected, being more or less prodded by the newspapers that stood by them, some of them entered upon a public campaign, making speeches to the people here and there, maintaining throughout the year 1910 or a good part of it, that they were going to build the subways by the city of New York and going to keep out of all association with existing corporations? You noticed that? A. Yes.

Q. But early in 1910 your propositions went in and your propositions went in to what was apparently an unfriendly camp. The gentlemen to pass on your propositions were men who had called your organization and your system by the hardest kind of names. What was done, Mr. Belmont? What was discussed among the directors as ways and means of overcoming this publicly stated opposition to your plans and purposes? A. No such situation existed as you outlined.

Q. You didn't take this seriously? A. As against correct principle with regard to transportation.

Q. These officials were against what you considered the correct principle and you conceded that point. What ways and means were discussed and adopted by you and your associates to overcome the errors of these men? A. Well, the specific one was the one that Mr. Shonts explained to you when he secured from Mr. Gaynor a representative who would go over our books and our whole situation and ascertain the real facts instead of those that were considered theoretical by the very people that you say were attacking us, newspapers and all that.

Q. That means simply that you approached him, so far as you know, by moral suasion and by logical arguments? A. By presenting the facts and laying open our books and our whole organization to his study.

Q. Were you surprised when so early in 1910, in March or April of 1910, Mr. Shonts was able to report to your board that

the mayor had offered to be an arbitrator between your company and the Public Service Commission? A. Well, that particular circumstance is not vivid in my mind.

Q. Don't you remember that? A. I don't remember that. I don't pick that out as anything special as your mind does.

Q. It is not my mind. I didn't know it until I read it upon the minute book of your company, two or three pages of minutes, the only report of Mr. Shonts to any subject that I found written in full. A. It was under the summary of what had been given us from time to time.

Q. Had he been reporting from time to time that Mr. Gaynor had offered to arbitrate? A. No, as a climax to his gradual learning.

Q. But, Mr. Belmont, Kingsley Martin had not come into the game then. There is nobody in there bigger than old Mr. Towns and that report reporting the arbitrator business was only after the second conversation that Mr. Shonts admits he had with the mayor. A. There are confusing circumstances, or something.

Q. No; Mr. Towns went down, as we thought at first, to make an introduction, but we discovered a few days before Mr. Shonts and Mr. Willcox had talked with the mayor at his office. The mayor and Mr. Shonts talked in the office in the presence of Mr. Willcox; then a little meeting down at St. James —

Senator Thompson.—The record of that meeting is on the minute books of the meeting of directors of the Interborough Railroad, of which I think Mr. Belmont was president.

Mr. Moss.—That is right. Mr. Shonts, with only two visits and without the help of the experts, such as Mr. Martin — Kingsley Martin — but only with the help of a poor old friendly lawyer, Mr. Towns, was able to bring back a report of the mayor who had denounced you so at Tammany Hall and many other meetings and in the magazine article, was ready to become your representative in arbitration. But you don't remember so we will pass on. It appears from the testimony here that on the night of March 22nd an agreement had been reached at the home of Mr. Willcox upon a proposition — a tentative proposition — that had been made by your company and that Mr. Shonts reported that at the meeting of the 23rd of March. The board of directors, to the surprise of

the Public Service Commission, threw it down, refused to approve it and turned the whole matter over to the executive committee. Do you remember that? A. I don't remember that particular thing. I haven't really, Mr. Moss, been giving my thoughts much more to the present than the past and I am not going to devote any very large amount of time to trying to revive my mind as to specific instances or facts, because —

Senator Thompson.— The question of the present and past of these subway contracts — the contracts are not executed yet and they are of the present, and the past in relation to them don't go back over four or five years.

Mr. Moss.— In the most kindly way possible, I want to say to you this: that in view of the length of time this examination of your predecessors, I mean the preceding witnesses, your association directors, the constant attention that has been given to this line, it seems to me that you ought to try, you ought to have a memory on these things, and you ought to try to bring it up. It seems to me incomprehensible that no director that shows here no memory of those remarkable things, when such rankling opposition seems to have been gotten out of the way —

Senator Thompson.— Mr. Belmont wants to state something.

Mr. Belmont.— I think I want to state this: For years you must remember that the idea of this extension began even during the construction of the subway and for years this thing has been going on backward and forward until the new line was undertaken, when Mr. Shonts took charge of the property and those negotiations went backward and forward, sometimes on one line, sometimes on another. But we were not following them with the thought that occupies your mind, so that some of these instances didn't impress us as they impressed you because you are following them with the idea that some undue and irregular influence was brought to bear, whereas such is quite far from anything that we knew and, therefore, in the discharge of our duties we would consider as negligible a great many things that seem to strike you because we brushed them out as they were unsuccessful. We were trying to meet the views of an unreasoning city and a set of

officials on a great many of the points that we were trying to convince them —

Senator Thompson.— I want to say something now, and that is this: That if we didn't have it, and didn't get it mechanically driven into us — not that we want it — the idea that you are trying to brush this inquiry by, we might not have the idea that you think we have. A. I can't throw any light on that.

Mr. Moss.— It is incomprehensible to me that when you had such powerful antagonists and such a declared antagonist, and he fell down in about a few weeks of negotiations so that he was your friend and ally, that you have no recollection of how that wonderful change of front was accomplished. A. Beyond the fact that his reason was finally reached. You must remember that almost every public official that I remember has followed not the facts and not a real study of the question of either transportation or the development of our company, but they followed the teachings of the newspapers.

Mr. Moss.— Let's see if they did. A. And when they came in close contact with the situation they have been compelled to change their mind.

By Mr. Moss:

Q. We will assume that Mr. Towns and whatever other gentleman talked with him, brought his mind to see the truth and that he became the arbitrator or willing to be the arbitrator for your company because his judgment was convinced and he saw he was in error. But we find in June, no, July, 1911, after having been acting for you and with you, he suddenly writes a letter addressing it to the people of New York, and says, referring to these very things and to this Interborough proposition: "The people of New York are being overreached by a few financiers of great ability" and he concludes the letter by calling it "damnable rascality" and says he will "never stain his name by putting those contracts through." Now, what has become of his conversion by legitimate means to your company? A. Mayor Gaynor is dead and I refuse to make any comment on that. I can't give you his reason and I don't propose to construct one for you.

Q. All right. Then there is the renewal, in July, 1911, of his position before the election, of a brief flirtation with the Interborough Company. How did you finally get him back again to the Interborough so that he was willing to sign these contracts? A. You followed the course of that through Mr. Shonts. I can't give you —

Q. Mr. Shonts don't remember anything. A. Nobody remembers a specific point in the turn in his opinion as far as that is concerned.

Q. Here was your whole business represented by the immense sums of money and by the future of your company and partly represented by the largest bond issue that we know of in the city of New York, one hundred and eighty million dollars, hanging over the fire through all these months, and I can imagine what your directors must have been thinking and saying to each other, and I cannot imagine that you don't know that, that nobody reported to you how the mayor's second conversion was accomplished. A. If you can't, I can give you no information along that subject.

Q. Of course, if you don't know and my suggestion of these circumstances to you does not refresh your recollection, then we have to go along, because all I really have a right to do is to try and refresh your recollection and get your recollection, and if your recollection doesn't come up, then I can't help it. Let's take another phase of it, the Stevens contract. The memorandum of Mr. Young, which has been put in evidence, and the probable duplicate memorandum of Mr. Reed which is in Boston —

Senator Thompson.— Mr. Lane.

Mr. Moss.— — and which nobody seems to be willing to dig out, indicate that at one time Mr. Shonts said that the Stevens contract was intended, among other things, to cover "commitments and obligations" that had been assumed by him in getting this subway deal through. Did you ever hear any statement either by Mr. Shonts or by Mr. Lane or by Mr. Young or by Mr. Morgan, by anyone connected with the railroad company, as to the "commitments and obligations" which Mr. Shonts incurred in putting this deal through? A. No.

Q. Was there ever any investigation of those matters made in the board of directors? A. No; but so far as I know about that contract, just before I (I sailed on the 19th of June, I think it was)—

Senator Thompson.— Of that year? A. Of that year, and before I sailed Mr. Shonts mentioned the fact that they were contemplating a contract with Stevens and they thought it would be a good thing for the company if it was entered into, for it was in a definite form as it was. Only just as a matter of information to me before I sailed.

Mr. Moss.— The thing was actually put over? A. No, no. As I learned afterwards, there was a meeting on the 23rd, where a form of a contract was presented, and I believe you have that. That was during my absence, and when I came back I dismissed those subjects from my mind because it appeared in the meanwhile that Stevens had failed and nothing had been done.

Q. Did you know that when this matter came up in some public board, it was so criticised by Mr. McAneny and other gentlemen there as covering a large and unnecessary profit that there came to be a newspaper notoriety about the Stevens contract. A. Certainly I followed to a certain degree the criticism about it, but I didn't give it very much thought because it had no bearing upon the actual business of the company any longer. The contract was not worth discussing.

Q. Do you know how Mr. Shonts and Mr. Stevens came to leave the Panama canal? A. No, I don't; I know only that they were associated there, but that is as far as my information extends.

Q. You took Mr. Shonts as president, and Mr. Stevens turned up as a prospective contractor. I am asking you whether you or your associates in the board of directors ever looked into the question of how Mr. Shonts and Mr. Stevens came to leave the Panama canal? A. I can't answer for any individual members of the board. I was satisfied. I know Mr. Shonts well enough to be satisfied that when he thinks a man is the right sort of a man I don't have to investigate as to whether his method of his relations with him. I know nothing in Mr. Shonts' character that would compel me to suspect him so as to be obliged to do things of that sort. I'd accept his statement. I would to-day.

Q. The fact that he continues to be the president of the board shows that he is perfectly satisfactory to the directors. When substantially the same proposition or the same work had to be undertaken, and it came to the Gillespies to undertake it on the 15 per cent contract, did you make any opposition to that? A. No, sir; because that contract was not an unusual one at all. Contracts of that nature have sometimes been made at even a higher percentage.

Q. If the Stevens contract was objectionable, wasn't the Gillespie contract objectionable on the same grounds? A. I wasn't there when the Stevens contract was discussed.

Q. But you came back and found it had been severely criticised as covering an unnecessary profit. Didn't you think the Gillespie proposition was open to the same criticism? A. I didn't pay attention to those criticisms, because I thought they were evidently founded upon either a misconception or a purpose to misrepresent and to try and find some irregularity where it didn't exist and I didn't waste my time thinking about it.

Q. Had you had any relations with Mr. Gillespie? A. No.

Q. Ever a member of any board in which he was a director with you? A. Nothing to do with him.

Q. Had you learned that the contract — the larger part of the contract — actually was performed by one of the unsuccessful bidders who was satisfied with the four and a half per cent profit? A. You mean the erector? I remember very well that it was one of the conditions on which we let the contract that the Stevens men should be the erectors, but they made their own arrangements with their sub-contractor.

Q. But the Gillespies were not an experienced firm in steel erection. He had had no experience in erecting a railroad with trains travelling on it. A. But he could employ them.

Q. He could employ them and your company could employ them. Why should you pay Mr. Gillespie 15 per cent to employ some persons, experienced steel erectors? A. The whole question of construction —

Q. We have been over all that and it is pitiful to see what Mr. Gillespie did with his 15 per cent contract and to compare it with what Terry & Tench did for four and a half per cent, with what

Snare & Trieste did for a small percentage, too. A. I suppose you know that that contract was let in competition.

Q. I don't think it was let in real competition and I'll tell you why. Because, Mr. Belmont — A. I insist that it was.

Q. Let's see if it was let in real competition. A. I won't allow you to insinuate —

Q. I will wait a minute and let you get calmed down, and give you some information. A. You can't here — you can ask me any questions you like, but you can't here ask me a question insinuating that something was done to which I was a party that was irregular. You can ask me any questions that bear upon it, but the moment you make that sort of a statement, I won't allow it.

Q. Mr. Belmont, it is your mind that has put the insinuation there. A. No, it hasn't.

Q. I ask you to listen. It is your mind and this Committee — A. It is your mind and this Committee that has put every single supposition of irregularity, and up to the present time you have not been able to prove anything and you have taken our time. It is a supposition in your mind and you can't prove a thing. You can ask me any questions, but I will be frank to tell you I am not going to tax myself and give my time —

Q. You are becoming a very interesting witness, Mr. Belmont. I am glad you came up.

Senator Thompson.— Let's get back to where we started.

Mr. Moss.— If you want to evade my questions and get out without answering them, I will ask the questions to the Chair. A. I am afraid to answer no questions.

By Mr. Moss:

Q. Mr. Belmont, you can't browbeat me. There are a lot of you fellows that are trying to get away by raising a cloud of ink and scuttling away behind it. A. You treat me as I treat you —

Q. You treat me as I ought to be treated.

Senator Thompson.— We will stop this right here. You are both going to get treated right.

Mr. Moss.— I don't care about my being treated right but you disgrace yourself.

Senator Thompson.— Just a minute now.

Mr. Moss.— I can handle this.

Senator Thompson.— I want to get you back.

Mr. Moss.— You just let me alone.

Mr. Quackenbush.— Who is running this Committee?

Mr. Moss.— Oh, you are going to butt in, are you?

Mr. Quackenbush.— We are before the Legislature of the State of New York —

Mr. Moss.— You are here for a purpose —

Mr. Quackenbush.— — and I won't have any quarrel or repartee. We are going to have order here.

Mr. Moss.— Mr. Chairman, I want to ask the question that the witness probably didn't understand.

Senator Thompson.— That is just exactly what I am going to do. I want to get you back —

Mr. Moss.— You don't have to get me back, for I am back.

Senator Thompson.— Mr. Moss asked you a question that carried no personal insinuation to you whatever. He called your attention to the letting of the contract. You said it was competitive business, and he said it was not competitive business as he understood it, and he was right.

Mr. Moss.— I made the flat statement that it was not competitive business, not as I understand it.

Senator Thompson.— He is entitled to say that because these bids were limited to the ones that were invited according to our testimony, by the president of your company. It was not an open bidding that everybody had a right to submit a bid. Six people were invited to submit a bid, and the three people that were bound together in the successful bid had their bids fifteen, fifteen and a quarter, fifteen and a half, fifteen and three-quarters, a percentage bid altogether. Under those circumstances Mr. Moss had a right to say from the record that he did not regard that as competitive business. He didn't mean any personal insinuation, none at all. He is talking from the record, which he had a right to do. I don't want him to make personal insinuations to you, but he is

entitled to take into account, when he asks a question, what the record already discloses. I don't think either one of you — I regard both of you as men having your own convictions and you are doubtless honest in thinking. I want you both to have an equal standing in this matter.

Mr. Moss.— I want Mr. Belmont to understand that I ask no questions —

Senator Thompson.— You have got to do it in the way lawyers cross examine.

Mr. Moss.— If you will listen to me a moment I will show you what I mean.

Senator Thompson.— I don't like this little personal quarrel you get into here.

Mr. Moss.— I have in mind not only what the Chairman said, that the competitors were limited — only those that were invited, and that three of those had bids so close together that it practically amounted to one bid, but I wanted to call your attention to something that you may have overlooked, that one of those bidders, who bid seventeen per cent, testified here that he was told to bid by his counsel, Grigs, Baldwin & Baldwin, who in certain matters were counsel for Mr. Gillespie, and he testified that when he put in his bid he had no real expectation of getting anything out of it. When we broke apart I was going to tell you that my reason for saying to you that I did not think this was to be called by the term that you called it, competitive bidding, first that it was limited to these six people; second, that three of them who ultimately took the contract were within one per cent of each other in a very peculiar cutting-up by fractions of the bid, and when we came to those that were higher up on the bids, one of those bidders admitted that he had been asked to bid by Gillespie's counsel. In view of those facts, do you think that was real competitive business — competitive bidding? A. I think, as far as our company was concerned, if any was disclosed afterwards, the contractors arranged among themselves so as to do away with their own competition. That is something we couldn't help, because if that is what was disclosed to you, that responsible people were selected — giving a very serious contract of that kind is much

more serious than the underground construction. You must remember that this was a construction that had to be constructed while the road was in operation, and therefore the selection of the contractor naturally had to be limited to people who would be responsible and in that line of business.

There isn't a contractor of that kind that would not have to go to the erectors, so far as that is concerned. They are limited in their class of work and the question of the price, so far as the unit price, the percentage that they were entitled to, if they conspired to make it 15 per cent and you proved that that was our loss, so far as that was concerned, but that is the best bid that we could get from responsible people, and when we selected this one (this is one thing that I remember thoroughly about, the one point that I remember thoroughly) in awarding that contract, the condition that was made by the board was that Terry & Tench should be the people that they would employ, not because we had any preference for them, not because there was any ulterior motive, not because there was anything involved in the way of influence or anything of that kind, but they were the best and most skillful erectors and they should employ some responsible people to be sure the work be done properly.

Q. What was there about the experience of Gillespie that made him particularly useful in making this structure with the trains running on it? A. They were contractors of reputation.

Q. They only got about a million dollars out of this job? A. Not net.

Q. It is true; it is proved. A. Well —

Q. And it appears from their own testimony that the practical direction of this work was given by your own people, Mr. Hedley and others. A. You mean in so far as following it, of course.

Q. They were the practical — A. No matter what the difference was, understand, it is all followed very carefully by our engineers. It is our practice to follow all those matters with our departments just as the city followed us when we built the subway. Mr. Parsons and the engineer of the city followed in every detail our organization and that is the practice with every corporation.

Q. Did you know when this contract was given to Gillespie, that Terry & Tench were going to do the major part of the work?

A. It was part of the understanding that they were going to do it on four and a half per cent profit.

Q. You didn't know that there was going to be a large free percentage in Gillespie's hands to do anything he pleased with?

A. I don't know it.

Q. Has there been any investigation by the directors? A. I didn't hear of it. The subject of the rates that a contractor pays to his sub-contractor wouldn't be a matter necessarily coming under our supervision.

Q. That is all I want to ask.

Senator Thompson.— I'd like to ask if you had known, Mr. Belmont, that the Stevens contract carried a percentage that would have amounted to two million dollars to be paid to Mr. Stevens above any expense that he might have gone to within two years, would you have voted for it? A. I don't understand that.

Senator Thompson.— I say, if you had known that the Stevens contract carried with it a ten per cent, which meant two million dollars to two million and a half dollars to Mr. Stevens, above any expense that he might have incurred, and to be paid within two years, would you have voted for it? A. You mean that the contract would have provided that we were to furnish the equipment, material and everything? No, I don't think any director would.

Q. If you had known that the Gillespie contract required the work to be done by Terry & Tench, for which they got a profit of about three hundred thousand dollars, and that Gillespie, for letting the work, got a profit of about eight hundred thousand dollars, would you have voted for that? A. The question wouldn't have been raised, in my mind, that they were to supply their own plant and their own supervisor and we were at no other expense than paying their commission. I would have voted for it. If they had a responsible sub-contractor, the question of the terms on which they made the contract wouldn't have affected my vote, no. Not unless there was such an understanding as you seem to think there was. Of course, if I thought that it involved any irregularity, not only I, but I don't believe another member on the board would have voted for it.

Q. I don't know but there is a proposed contract there. This pretty near amounts to that. A. I can't throw any light on that.

I know of no commitments, no suggestions that any kind of thing was in a contract. I only know that we made what was, in my mind, a fair contract, because those percentages have been paid over and over again. I have served on boards and railroads where percentages have exceeded that. In the Gillespie case, it seems a perfectly reasonable percentage. It was the one that any one of the contractors would have demanded, so far as this concerned, practically.

Mr. Moss.—Stevens didn't talk for more than ten per cent. A. You keep forgetting that the Stevens contract was a graft based on the outside demands, as I understand it — outside demands that Stevens was to make.

Senator Thompson.—Stevens didn't know anything.

Mr. Moss.—He told us, here, he was willing to take seven per cent or less. A. I believe it was stated to you here — I know it has been stated to me frequently by different members of the board, so far as that was concerned, that the subject didn't come to actual vote. They wouldn't have authorized it. I remember Mr. Freedman said that that feature he never would have agreed to, that we should provide the ground; so when I came back from Europe, not only the contract as it had been considered was indefinite, but the fact that the man himself had failed and put it entirely out of the running, made me dismiss the whole thing altogether, and I think all the rest of us. The question of what thoughts were in Mr. Reed's mind or Mr. Lane's. They are both personal friends of mine. They are dead, both of them, and can't give any explanation, but when the Gillespie contract came up, it was offered as all other contracts are and the question of the sub-contractors was only the mere fact that they were to employ as erectors, in connection with the work, the people that we had the greatest confidence in and had the greatest experience. That was all that occurred and I don't remember if anybody connected with the actual executive of the company knew anything about the percentages that were to be paid to the sub-contractors; why they should disclose that to you if they knew, I don't know anything about.

Senator Thompson.—Just a few questions that I had in mind from facts that seem to be conceded on the record. Now, of

course, these Dual subway contracts — Mr. Shonts was the executive head of the company and I assume that he had the same license that most any business organization gives its executive head, that is to go ahead and do according to his best judgment. That is the way the directors put it up to Mr. Shonts. That was his business, to take care of these questions and get these contracts made in a way that the railroad company would have a benefit from it. A. No; the practice that is followed by Mr. Shonts and by most executives, is that they do all the rough work and when they have accomplished and got something in concrete form, to submit to the board, they do so, accompanied by all the information that is required. Mr. Shonts has never done anything without the authority from the board. He is very particular about that. Of course, I understand that the directors themselves —

Senator Thompson.— You are not getting what I want. You paid him a bonus of \$150,000 and that was because he concentrated himself on this one important thing. You didn't get any bonus, did you? A. No. He did because he gave more time than any human ought to give to it. He very nearly broke his health. I don't know whether he is a strong man to-day as he would have been if he hadn't —

Senator Thompson.— He spent his whole time, attention, energy, in the question of getting these subway contracts over, and the railroad appreciated it by giving him \$150,000. A. If you will look into the record you will find that it took two years for the minds of the city and the corporation to meet.

Senator Thompson.— Now just listen to me a minute and see what we see. Your contract was signed, and his work was accomplished on the 18th of March, 1913. Your railroad received a contract — contract No. 3 — and you received two certificates, one for third tracking the Second, Third and Ninth Avenue lines. In that certificate, for the Second, Third and Ninth Avenue lines, the question of the supervision of the Public Service Commission over any contracts you might let for that work was left out. It was in every other certificate. There were three granted beside that. Every other certificate required that. In that it was left out. So far as we can find, there wasn't a thing on earth that

could have been put over through the absence of that requirement in that certificate except this Stevens contract. The Stevens contract could have been put through. Now, he makes an application to the Public Service Commission; he doesn't take it up with the board of directors — writes a letter and asks them to approve the contract without having anything before them. They ask for a contract and a draft is submitted and by virtue of that draft we make our inquiries. When that was submitted to the board of directors in your absence, Mr. Lane, one of your directors, opposed it. Now, the suggestion is made that Mr. Lane had another contractor in Boston that wasn't asked to bid. In any event he makes a memorandum in which he said Mr. Shonts called him aside and told him that neither he nor Freedman — don't know why he should mention Freedman — nor Stevens, Shonts, Freedman or Stevens was to get anything out of that percentage, but was to take care of certain commitments and obligations that he had incurred in negotiating the contracts for the city. Now, that is what Mr. Lane, in his memorandum, says Mr. Shonts told him. See? And he told it to Mr. Morgan. A. Hasn't Mr. Shonts and Mr. Morgan denied that?

Senator Thompson.— Well, they denied memory of it. They don't know anything about it. I asked Mr. Morgan and I am leading up to ask you. Mr. Lane's got a memorandum he made himself. Here is the memorandum of Young. I asked Mr. Morgan to assist us in getting that Lane memorandum and I want to ask you if you don't think that memorandum ought to be had, from your standpoint as a director of the railroad? A. That you ought to have it here?

Senator Thompson.— Ought to get it. Ought to find out what Mr. Lane says in it. A. I suppose so. If it is exactly the same thing as any other memorandum, the only trouble is this: You know whatever ideas these gentlemen had about it must have been a very indefinite suspicion.

Senator Thompson.— Well, the memorandum was very definite.

Mr. Moss.— They say Mr. Shonts told them a certain thing.

Senator Thompson.— The certificate for the third-tracking, the absence of the requirement for the Public Service Commission

supervision, was definite. The meeting of the directors was definite and the fact that Mr. Shonts submitted to the Public Service Commission after the directors had fell down on it, after Stevens said he had agreed to it. That is all definite. What I am getting at is this: I want to ask you this: Mr. Shonts had to go on. Now, when you make a campaign for anything you have to have expenses. Fellows run for office—have to have expenses and folks contribute to it. You know that as a politician. They have a campaign fund. No man is a politician after sixty years of age, but they have to have campaign funds. They have to spend, and you have to contribute. Mr. Shonts had to have a campaign fund, didn't he? A. You know laws prevent contributing. It is a perfect blessing to new corporations that that has been done, so that it allows them to fall back upon correct principles.

Senator Thompson.—I will agree with you and I will just digress to say that when you run for office and you get a contribution to the system, that obtains now because you can't win the contribution, and then you will have to dance according to the way in which they pull the string forever after.

Mr. Moss.—It would be a good idea to give a few contributions to us.

Senator Thompson.—That's the way we do it. If a man is limited to \$10,000 to spend, they contribute him \$100,000 and he can't account for it and he is up to his ears in hot water all the rest of his life.

But to get back. Now, if Mr. Shonts had come to you and said, "Look here, Mr. Belmont. The Goulds made me a lot of trouble in this matter." Didn't they hold up on this thing for quite a while? A. For a while, but those were stumbling blocks—

Senator Thompson.—Didn't something have to be done by the Goulds in order to get this matter worked out? A. Nothing except to—

Senator Thompson.—Didn't the Goulds get some benefit out of this before they surrendered their control in the Metropolitan? A. No; not that I know of. I believe they wanted some.

Mr. Moss.—Was that part of the "commitments and obligations"? A. There is nothing. Mr. Chairman, you left that ques-

tion of the memorandum a little hazy. Let me say this: You asked me something, and Mr. Moss did, that is: didn't I think we ought to have that memorandum, speaking as a director of the corporation. You know this (you are both lawyers), that a memorandum of that kind, unsupported by evidence would be just as useless as a piece of paper without anything on it. You couldn't convince or convict anybody. You have gone as far in trying to support it by evidence as you can. Unfortunately the two men that made them are dead — both of them. I believe one of them gave testimony before you, the other one you haven't, and therefore I say to you that, so far as we are concerned, it doesn't make any difference to you whether we have that memorandum or not. It would be absolutely useless.

Senator Thompson.—Let's get back to where we started. Mr. Shonts called you aside and said: "Look here, Mr. Belmont. I have had some trouble with Gould; I am under some commitments and obligations and I have got to take care of them. Now, I am going to give Stevens this ten per cent (of course I can't legally stick the company for this thing), but would you stand to let the contract go over?" A. This is a hypothetical case. If Mr. Shonts told me what you really believe was the case, I would have agreed with him?

Senator Thompson.—Yes. A. No; nor anybody else.

Senator Thompson.—Are you familiar with the transactions with Mr. Gould or his agents or his officers or his corporation? A. During the progress of the negotiations; yes. He reported to us — I don't know just what that was, but it was disposed of.

Senator Thompson.—Who handled that? A. Mr. Shonts.

Senator Thompson.—But he didn't make any reports on it. A. I wouldn't say that. I think there may be a memorandum that shows what was important. I doubt very much if there is no record at all of the subject being touched on.

Senator Thompson.—So far as you know, there was no consideration that went to the Goulds or the Gould interests of the Gould company or their agents? A. You mean that is not a matter of record, and in the books?

Senator Thompson.—On account of the position they are in, the consent had to go to the Metropolitan and not to the Interborough.

Mr. Quackenbush.—The Manhattan. A. You mean that some unaccounted for sum was paid to Mr. Gould?

Senator Thompson.—Didn't your people go into the stock market and gather up the stock in the Manhattan Company? A. No.

Senator Thompson.—How did that come? A. You mean went into a speculation—

Senator Thompson.—No; you went in to get control of the Manhattan Company, and bought up the stock of that company. Didn't you have to create a fund for that? A. No.

Senator Thompson.—Weren't you interested in a pool that went into that company? A. No, sir.

Senator Thompson.—Well, if you had done that and paid more for the stock than could have been disposed of after you got control, what would you have done? That might well be considered under the term of "commitments or obligations." A. I don't know. You would try to connect a thing like that with a purpose to use the funds for persuasion. Is that it?

Senator Thompson.—No. It might be persuasion after you got control of the company. A. I had nothing to do with anything of that kind. I am not aware that anything was done.

Senator Thompson.—If Mr. Shonts had suggested to you that he had to have some money before the contracts were signed, would you have contributed to that fund? A. I wouldn't have contributed for that purpose.

Senator Thompson.—Would you contribute it to Shonts to allow him to get control of the Manhattan company? A. You mean if they asked me to contribute for a fund to persuade —

Senator Thompson.—Get control of the Manhattan. A. No such a thing could be conceived that I, as a stockholder and an individual, and others, would make up a purse to pay something that was for the benefit of the corporation.

Senator Thompson.—To go out and get control of the company. A. I don't think you will find stockholders of that kind.

Senator Thompson.—Do you know of anything of that kind that was carried out by Mr. Shonts? A. No.

Senator Thompson.—Another thing. You remember Mr. Shonts' application was granted by the board. A. Yes.

Senator Thompson.—At that time wasn't it stated to the board of directors by somebody that this Shonts bonus could be charged to the city? Wasn't that statement made before the board by somebody? A. No.

Senator Thompson.—Sure about that? A. We made an appropriation. It was the company's appropriation. Whether it was to be a charge to the city or not I don't know — wasn't suggested that I know of.

Mr. Moss.—The Rockefeller Foundation got control of the Manhattan, didn't it? A. I don't know anything about that.

Mr. Moss.—Don't the Rockefeller interests control the Manhattan now? A. The Rockefellers have always had a large interest.

Mr. Moss.—Didn't the Foundation help in getting control? Didn't they force the Goulds out? A. I understood it was through their influence.

Mr. Moss.—Wasn't that done to help the Interborough? A. No; to help their own property.

Mr. Moss.—But to help the Interborough? A. No; I can't concede that.

Mr. Moss.—The relations are not unfriendly, are they? A. No, but they are not of the kind that you seem to think.

Mr. Moss.—I am putting questions to you which other people are talking about and it is my business to set all these things at rest or this investigation will not be complete. A. You object to my suspicions?

Mr. Moss.—I don't object to any suspicions; you can suspect anything you like. A. Then why object?

Mr. Moss.— I am not objecting at all. A. I thought you were.

Mr. Moss.— I am trying to tell you that I ask you questions out of the air sometimes, because they are in the air and I am not afraid to ask you the questions, no matter if you are August Belmont. A. It did remind me somewhat of air.

Mr. Moss.— I don't propose to have anybody say that I was afraid of any interests —

Mr. Belmont.— I'd like to have my time limited — I can give you but a limited amount of time.

Mr. Moss.— That is the trouble, Mr. Belmont. I ask you a line of poetry and you put in a page of prose, then you think that I take all the time. A. I hope I have satisfied you.

Mr. Moss.— You have satisfied me very well. A. By-gones will be by-gones.

Mr. Moss.— Mr. Belmont, I never carry out of these rooms any bad feeling. It is all in the game. A. Then, Mr. Chairman, you are through with me?

Senator Thompson.— Unless you want to state something. Much obliged to you.

Mr. Moss.— Any time Mr. Belmont wants to submit anything to us in the future, we will always be glad to have it.

Mr. Belmont leaves the stand.

Mr. HENNESSEY takes the stand and, having been duly sworn, testifies as follows:

Senator Thompson.— Mr. Hennessey, you were one of the officials of the city administration in the year 1910? A. Yes, sir; I was chairman of the board of assessors of the city of New York.

Senator Thompson.— Now you were appointed when? Do you remember the date? A. I think, January 17, 1910.

Senator Thompson.— On that day the mayor of the city addressed to the board of assessors a letter calling attention to certain awards for real estate or interests in real estate that he criticised and asked you to investigate them. A. He appointed a new

board. Mayor Gaynor, about the 17th of January, 1910, appointed a new board of assessors and this letter referred to by the Chairman, that letter of the mayor's, was addressed to all the members of the board he had appointed, three in number, myself whom he designated as chairman and Mr. Ormond, who is still a member of the board, William E. Ormond, and Mr. Astarita is the other member. Mr. Anthony C. Astarita.

Senator Thompson.— You went on, then, and made the investigation, didn't you? A. Yes.

Senator Thompson.— And you made a report? A. I made a report.

Senator Thompson.— What became of that report? A. I am sure I don't know. You mean the copy?

Senator Thompson.— Was there copies made of it? A. Oh, yes.

Senator Thompson.— How many? A. I suppose six or eight.

Senator Thompson.— What was done with them? A. Well, the mayor got one, I recall, and the commissioner of accounts got another. My recollection is that at the same time he asked them to make an investigation also. Each member of the board had a copy. I had a copy. Mr. Ormond had a copy. The secretary had a copy. There were at least six, probably eight or ten.

Senator Thompson.— The copy that you had — what become of that? Have you got it? A. No, I haven't.

Senator Thompson.— Have you looked for it? A. Have I looked for it? I know that I haven't got it, because all the papers I had — some papers referring to my own data, to work I did after I was dropped from the board on the first of January, 1914, after I had helped to elect him, I was dropped from the board — I had no use for them further. I wasn't interested in those papers after that.

Senator Thompson.— It is simply a question of dropping the report out. A. This gives me a fair opportunity to say that — I think a very fair opportunity.

Senator Thompson.—I remember the campaign. I guess you had something to do with it. A. I had. That is a mere incident. I wasn't interested in anything affecting the board of assessors.

Senator Thompson.—I think the comptroller says that the result of the election didn't turn on the Dual subway contracts. Now, you say you haven't your copy? A. No. I recollect very well that the office copy was there a short time before I left the office which might be recovered as the secretary's copy.

Senator Thompson.—I am going to say to you that when asked yesterday at the office, for a copy, through Mr. Morse, he was informed by Mr. Ormond, I think, the secretary, that the copy wasn't there and that you had it. A. Well, if he said that you ought to put him on the stand. I haven't been connected with the board since 1914. I saw the report there then. That was the only report. Each member of the board had one at the time.

Senator Thompson.—When you left there you say there was a copy left there? A. I remember seeing a copy right there before I did leave, yes.

Senator Thompson.—Well, that is all, then, Mr. Hennessey. We are much obliged to you.

Mr. Moss.—I think if he can remain here a little while longer I can dispose of this check matter. Will Mr. Sherman and Mr. Cohen please return to the stand?

Mr. Hennessey leaves the stand, which is taken by Messrs. Sherman and Cohen.

Mr. Moss.—The checks that I called for—have you them in your hands, Mr. Sherman? Would you lay them down in front of you there for a moment till we get this all together? Now, the next one is No. 34, November 6; the next are Nos. 40 and 48 in November and December. The next are No. 64 and No. 65. Now, we have the Equitable Trust Company checks Nos. 78 to 87—No. 78, No. 81 and No. 87. Then in the Farmers Loan & Trust Company check No. 7, and in the Guaranty Trust Company checks No. 1001, No. 1002, No. 1006—

Mr. Sherman.—I don't seem to have No. 1001 and No. 1002.

Mr. Moss.— You can look for them and I will go on with the others. No. 1006, No. 1009, No. 1017, No. 1023, No. 1026, No. 1034, No. 1041, No. 1050, No. 1058, No. 1059, No. 1071, No. 1077, No. 1080, No. 1081, No. 1082, No. 1084, No. 1089, No. 1096, No. 1099, No. 1101, No. 1103, No. 1113, No. 1142, No. 1147, No. 1152, No. 1154, No. 1163, No. 1168, No. 1179, No. 1183, No. 1186, No. 1190, No. 1192, No. 1196, No. 1199, No. 1205, No. 1259, No. 1264, No. 1268, No. 1273, No. 1276, No. 1277, No. 1278, No. 1283, No. 1284, No. 1288, No. 1292, No. 1295, No. 1297, No. 1299, No. 1304.

Senator Thompson.— Now, in relation to this matter here, I can't help but get out of patience. We have had an experience a while ago with this idea that the investigating committee is a court. An investigating committee is not a court; it can't be; a court is something to try something that you know, an investigating committee is to find out something that you don't know. That is the difference. Now, the reason why I have criticised the Guaranty Trust Company. I don't want to do you any great injustice. I have a great deal of respect for the personnel of the officers that I know of, but I can't help but compare the matter in which records of the Interborough Railroad Company have been handled. We have given the most severe investigation, have been given all the records we asked for in the firm of J. P. Morgan & Co. They didn't ask us to specify, they didn't try. In an investigation of this kind when you are investigating something, trying to find out where a thing is, it is ridiculous to suppose that you give the Guaranty Trust Company the number and date of the check of the transaction and make a success of the investigation. That is what I want to tell you. I want to disagree with you about the fundamental principle that the Committee has got to tell you the date, the number of the check and specify identifying features of every paper you produce.

Mr. Garrick.— I have delivered to you over eight hundred papers without specifying particulars and I have done everything possible to help this investigation. Now, when it comes to a question of the rights of our client and our relations to those for whom we are acting, I choose to name the proposition of law which is involved in the case.

Senator Thompson.— We go to the Interborough —

Mr. Garrick.— The Interborough Company is under investigation. The Guaranty Trust Company is not under investigation, and this Committee has no power to investigate Andrew Freedman, who is dead, and you ought to be ashamed.

Senator Thompson.— You can't get away with that stuff. You can't get righteous indignation over the fact that somebody dies. If somebody performs an act that is illegal and then dies and don't have to stand for the result — nobody is after dead men or to investigate dead men, but facts are facts and contracts are contracts, and if the contract has got to live because a man participated in it is dead, that is a wrong idea and we can't help that. We are not going into that, but that is the thing I want to call your attention to. I want to say to you that in our experience with concerns like Morgan & Co. they didn't stand on this thing at all. They co-operated and turned their records over to us.

Mr. Garrick.— I have co-operated with you as fully as I can in justice to my client.

Senator Thompson.— It is quite possible that in a thousand papers you might turn over nine hundred and ninety that wouldn't be worth anything and the other ten would be worth something. It might be possible that you will have the opportunity to —

Mr. Moss.— You misunderstand. It is not that you are under criticism for an intention to not show anything, but you have not the same knowledge — you don't know the little circumstances that have come out in the investigation, and while you have with great kindness and great diligence dug out any papers and sent them over, they represent in *your* judgment what is pertinent, and not in *ours*. The judgment of people that have not been here and know not the many things that have been touched —

Mr. Garrick.— For six months this thing has been going on and you have had ample opportunity to do something.

Mr. Moss.— No. 1359, No. 1365, No. 1366, No. 1368, No. 1372, No. 1373, No. 1374, No. 1381, No. 1386, No. 1391, No. 1400, No. 1401, No. 1405, No. 1409, No. 1412, No. 1428, No. 1429, No. 1435, No. 1439, No. 1442, No. 1457, No. 1458, No. 1476, No. 1510, No. 1560, No. 1565, No. 1570, No. 1579 —

Mr. Sherman.—No, I haven't anything beyond that.

Mr. Moss.—Well, No. 1579 is stated to be a check dated November 19, \$1700.00 endorsed by Mr. Cohen "Cash." Now, on the National Bank of Commerce, No. 14537, July 5, 1912, Bearer, \$300.00 endorsed by Mr. Cohen "Cash." No. 14782, September 30, Bearer, \$1000.00 endorsed by Mr. Cohen "Cash." No. 15298, March 3, 1913 —

Mr. Sherman.—I have that.

Mr. Moss.—All right. No. 15326.

Mr. Sherman.—All right.

Mr. Moss.—Now, the United States Mortgage and Trust Company No. 197 (I read from the memorandum), March 5, 1912, Bearer, \$200.00 endorsed by Mr. Cohen "Cash." Have you any of that bank there? A. Yes, sir.

Q. No. 202? A. No, sir. No. 231.

Q. No. 202, March 12, 1912, \$200.00. No. 213, April 24, \$200.00. No. 214, May 27, \$300.00. No. 216, May 10, \$200.00. Drawn to Bearer, endorsed by Mr. Cohen in cash. No. 217, May 22, No. 219, No. 223, No. 224, No. 231, No. 232, No. 234, No. 239, No. 242, No. 245, No. 253, No. 256, No. 263, No. 265, No. 266, No. 267, No. 268, No. 271, No. 272. Have you any other checks in your possession than those which I have called for, drawn to Bearer and endorsed by Mr. Cohen? A. I think it very probable. I can't say definitely.

Q. I have asked for all that appear upon the memorandum given me by Mr. Morse, made from the books. If you find that you have other checks drawn by Mr. Freedman to Bearer and endorsed by Mr. Cohen, I shall ask you to look for them and at a convenient time to let me know about it. Now, Mr. Cohen, will you kindly look at those checks?

Mr. Garrick.—Mr. Sherman will keep possession of the checks.

Mr. Moss.—Can't Mr. Cohen look at them

Mr. Garrick.—No.

Senator Lawson.—What is the objection to that?

Mr. Garrick.—I have stated my objections before, Senator Lawson. I have stated my objections before. I repeat that the Guaranty Trust Company is perfectly willing to do everything it possibly can to help this Committee, but that it will not surrender papers for the inspection of any one other than its employees unless those papers are relevant and pertinent to the inquiry of this Committee, and then only with the witness upon the stand, who can refresh his recollection.

Senator Lawson.—What is Mr. Cohen's relation to Mr. Freedman?

Mr. Garrick.—He has no relation to him.

Mr. Moss.—Mr. Cohen says he was secretary to Mr. Freedman.

Senator Lawson.—What is the status of the Guaranty Trust Company?

Mr. Moss.—Executors of Freedman.

Senator Lawson.—The Chair will direct that Mr. Cohen be permitted to pass upon the checks in the presence of the Guaranty Trust Company's representative and employee.

Mr. Garrick.—Our instructions to Mr. Sherman is that he shall permit no one to examine the checks, and I make the further statement that this course of the conduct is prompted by the actions of the Committee, when a voluntary examination was permitted.

Senator Lawson.—Do you understand that this is a Committee of the Legislature investigating a matter pertaining to the Public Service Commission, in which the late Andrew Freedman was part and parcel of one of the utility corporations?

Mr. Garrick.—I know that Mr. Freedman was a director of a great number of public utility corporations.

Senator Lawson.—You understand it is entirely within the scope of power of a legislative committee to direct matters pertaining to the investigation to be produced and examined by proper witnesses?

Mr. Garrick.—Yes, I do.

Mr. Moss.—The dates of these checks are close to and inclusive of the dates when steps were taken in the subway negotiations

with the city of New York that have already been discovered by this Committee and not pertinent to its investigation.

Senator Lawson.—What is the real objection? Is it because within the short period in which this Committee have power to prosecute the examination of witnesses that you stand upon alleged rights to protect your client and not to permit the examination of these papers?

Mr. Garrick.—None whatsoever. The Committee has had knowledge of these papers for almost six months and they have taken no steps to force such alleged rights as they think belong to them in connection therewith, but the stand that we have taken is based upon our plain legal duty to our clients. We are acting as fiduciaries. We haven't the right to disclose private papers belonging to us in a trust capacity.

Mr. Moss.—Mr. Chairman, that this is an effort to hamper the Committee and prevent it from getting evidence from Mr. Freedman's accounts is apparent from the fact that these very checks have been submitted to Mr. Morse and have not been kept private—that they have been made the subject of the report. I am now examining the witness who endorsed those checks and for the purpose of refreshing his recollection if he should see the very checks that he drew and endorsed it would help his recollection—Mr. Cohen's recollection—to tell us about them. Those checks have not been made private; they have been made public to this Committee. They have been made public to this Committee by the statement of Mr. Garrick, who says he gave Mr. Morse full access to them, so the knowledge of those checks has not been kept from us, but when we want to put the knowledge of those checks before Mr. Cohen, who endorsed and cashed them, then for the first time the great duty to Mr. Freedman is considered, and I suppose the fear is that through Mr. Cohen's testimony it will transpire that some of these checks went to some public officials of the city of New York.

Senator Lawson.—It is clearly apparent to the Chair that the statement made by Mr. Garrick that he has been at all times ready and willing to co-operate with the Committee is not and cannot possibly be correct or accurate because to quibble over the act

of the private secretary of the deceased to refresh his memory by scrutinizing these checks of the deceased in the presence of the employee of the Guaranty Trust Company or of the counsel for the deceased is equivocal.

Mr. Garrick.—Senator Lawson, might I state that in February Mr. Perley Morse appeared at the Guaranty Trust Company pursuant to an arrangement made between Mr. Bainbridge Colby, who then filled the position now occupied by Mr. Moss, and at that conference it was arranged that an examination of these papers should be made and that only such papers as were relevant and pertinent to the inquiry were to be made public in any manner whatsoever. Since that time the Guaranty Trust Company has repented of having given such permission because of the abuse of privilege accorded from one gentleman to another reputable gentleman.

Senator Lawson.—What abuse do you refer to?

Mr. Garrick.—I refer to the abuse of correspondence which has appeared in public print, the so-called Quigg letters, for one thing. Some of these papers—

Senator Lawson.—What has that got to do with you?

Mr. Garrick.—A great deal has been said in the newspapers.

Senator Lawson.—Are you counsel for Mr. Quigg?

Mr. Garrick.—I wish I were.

Senator Lawson.—Irrespective of any jurisdiction of this Committee of your confidential relation to the estate of the deceased, you don't want to go down on record as having this Committee believe for a moment that because of any incident relating to Mr. Quigg which is entirely irrelevant that you want to have yourself go on record because of the Quigg correspondence that you now advise your client and repent on your former open-heartedness not to give this Committee information it should have?

Mr. Garrick.—The Committee has the information. I don't quibble upon the conduct of the so-called matter. I do object to the publicity given in the papers as to various checks of Mr. Freedman which were stated to be large cash payments, etc., when

the fact that there were such checks appeared in this examination which have a connection with this inquiry has in no way been made apparent.

Mr. Moss.— We want to make it apparent through Mr. Cohen.

Mr. Garrick.— Go ahead and make it through Mr. Cohen.

Mr. Moss.— Go ahead and show Mr. Cohen the checks.

Mr. Garrick.— Mr. Cohen is not to see any checks.

Mr. Moss.— You are retained by the people that want to keep this investigation from going forward. That is very plain, and so far as the Quigg letters are concerned, perhaps you don't know that those Quigg letters were pertinent to this investigation and have been put on the record of this investigation. It turned out that those checks were paid for matters relating to this Committee, or a portion of them. Now, then, will you kindly read the first of those checks and let Mr. Cohen see that his own endorsement is on the check?

Mr. Garrick.— I direct the witness not to —

Senator Thompson.— You refuse to turn these checks over to counsel and you refuse to let the witness see them, with his signature on the back? You refuse to turn the checks over? You are up here with a childlike proceeding with a man with a lot of checks in his hand, but you hang on to the checks and won't show them to anybody. You say you complied with the subpoena. We won't waste any more time with you, not a minute. The attitude of the Guaranty Trust Company, whom I assume you represent, is perfectly understood by this Committee.

Mr. Moss.— Mr. Sherman, you don't know what was done with the proceeds of those checks? A. No, sir.

Mr. Moss.— Mr. Cohen, you don't want to be drawn into this mess. Is there any one here but yourself that can tell what was done with the proceeds of that check?

Mr. Cohen.— I doubt it.

Mr. Moss.— If you could see those checks with your initial upon them, the dates and the circumstances, you might be able to tell what was done with the proceeds?

Mr. Cohen.— Yes.

Mr. Garrick.—

Senator Lawson.— You have no standing before this Committee.

Senator Thompson.— Call the Sergeant-at-Arms; we will see whether you stand before this Committee.

Senator Lawson.— The attorney has understood not to interrupt any further.

Mr. Moss.— I suggest the Sergeant sit there.

Mr. Moss (to Stenographer).— Did you get a question and an answer?

(To Witness).— If you should see these checks or some of them with the memorandum upon them you might be able to tell what was done with the proceeds, could you not? A. Yes, sir.

Mr. Moss.— But of course if Mr. Sherman, who is sitting right close to you, refuses to let you see the checks you can't do that? A. Yes, I can.

Mr. Moss.— Proceed and do it. A. All those checks that you have referred to, if you will permit me to say it is very amusing —

Mr. Moss.— You have not heard the amounts of them read. A. I know all the amounts. All checks that were made out to bearer that I endorsed, I know what purpose they were put to.

Mr. Moss.— Have you in memory the amounts of all of these checks? A. Some may have been two or three or five or seven hundred.

Senator Lawson.— Kindly bear with the counsel.

Mr. Moss.— Are there any drawn for larger amounts than seven? A. May have been for a thousand.

Mr. Moss.— Any more than a thousand? A. May have been for two thousand.

Mr. Moss.— Do you remember the amounts of those checks? A. Not every check, no, sir.

Mr. Moss.—Do you know what Mr. Freedman did with each one of those checks? A. They were used for his living expenses.

Mr. Moss.—If you saw some of these checks you might be able to recall the circumstances in which they were issued? A. Usual circumstances, Mr. Moss.

Mr. Moss.—You are giving us a general answer, of course. Usual circumstances. A. There was no special incident connected with any one of the bearer checks that were made.

Mr. Moss.—How do you know? A. Not to my knowledge.
By Mr. Moss:

Q. It was some years ago and there were many of them. Counsel say there may be more. I have called for such as my memorandum says. You don't care to inform me if you know of the circumstances of those checks? A. If there had been any deviation from the regular line of procedure I should certainly recollect it. I just took the checks to the bank and cashed them and brought the money to Mr. Freedman and he used them for his living expenses. He was worth a lot of money and had to spend a lot of money.

Q. Here is check No. 30, October 30, 1912 —

Senator Lawson.—Just a moment. You can't take down the minutes of this meeting.

Mr. Garrick.—

Senator Thompson.—You can't come here — I won't let you come here — and insult the members of the Legislature. You have got to be a gentleman while you are here or we will ask you to step out, and then if you don't do it we will put you out, and your man will not be permitted to take this testimony because we don't permit anybody to do it and you can't do it. That is all there is to it; that settles it absolutely.

Mr. Moss.—Mr. Cohen, you have said —

Senator Thompson.—Put that man out. If he takes any more testimony we will take him out of the room.

Mr. Garrick.—I think I will let you eject the man.

Senator Thompson.—We will suspend.

Mr. Moss.— Wait a minute.

Senator Thompson.— Take him out and destroy his record.

Mr. Garrick.— Let them eject you.

Senator Thompson.— Put him out. You may stay if you don't take any notes.

Mr. Garrick.— You will continue taking notes as long as you are in the room. Let them eject you.

Senator Lawson.— I want to place on the record that it is entirely uncalled for for a member of the bar of this city to come before a Legislative Investigating Committee of the Legislature of the State of New York and show the disrespect that this Mr. Garrick has displayed, and further say that if Mr. Garrick continues to display that same disposition before this Committee, this Committee will remove him from these hearings.

Mr. Moss.— Mr. Chairman, you might as well take the position you ought to take. You directed that man who was writing to stop writing. Mr. Garrick directed him to continue writing. Mr. Garrick directed him to disobey you, and if you have any respect for us and yourself you will order Mr. Garrick to be removed like the other man, and I wait to see you do it.

Senator Lawson.— Just one question first.

Mr. Moss.— I am not accustomed to temporizing with this fool business. He has interfered and he is disrespectful to the Committee now.

Referring to your statement, Mr. Cohen, that you had an undeviating rule and all these moneys were used for Mr. Freedman's personal expenses, I call your attention to the items in my notes here which show on the Bankers Trust Company check No. 29, October 30, 1913, to bearer, \$5,000.00; No. 30, the same day, October 30, bearer, \$15,000.00; No. 31, October 31, the next day, \$1,000.00; on November 1, the next day, \$9,000.00. These checks are all drawn to bearer, all on the Bankers Trust Company—endorsed by you and all cashed. That is \$30,000.00 in four checks drawn in three days on one bank while other checks are being drawn on other banks. Thirty thousand dollars. Now, do

you say that those checks were for the living expenses of Mr. Freedman? A. As far as I know they were.

Q. As far as you know? Don't you know they were for other purposes? A. No, sir.

Q. Don't you know that in October and November, 1912, Mr. Freedman had other reasons for spending \$30,000.00 by blind bearer checks than for plain, personal living expenses? A. Absolutely not.

Q. Those are only a beginning — the first four of those checks — and I can well understand how Mr. Garrick can represent Mr. Freedman and allow the Morgan and other factors to stop this investigation.

Senator Thompson.—I don't think we have a right to lay it to Morgan & Co.

Mr. Moss.—He represents its along the line.

Senator Lawson.—He is not representing the Guaranty Trust Company, too?

Senator Thompson.—Morgan took no such attitude before this Committee.

Mr. Moss.—The examination will go right along. \$30,000.00 at a lick right at the head of the line.

Senator Lawson.—It is now very late; we will suspend until 3 o'clock.

Suspension.

AFTERNOON SESSION

Meeting called to order at 3 o'clock, Senator Thompson in the chair.

Mr. Moss.—Mr. Cohen, please return to the stand.

Mr. Cohen, also Mr. Sherman, take the stand.

By Mr. Moss:

Q. Now, Mr. Cohen, we were talking about the Bankers Trust Company account and I find that between October 30 and Decem-

ber 19 there were nine checks drawn on that account to bearer, and cashed by you, amounting to \$33,000.00. October 30, 1912, to December 19. You don't mean to say that that was all for living expenses? A. So far as my knowledge is concerned, Mr. Moss.

Q. But he was drawing his living expenses from other bank accounts. In the Guaranty Trust Company on November 1 there was \$1,500 00 and on December 24 \$550.00. A. We had no fixed rules what time to drawing the living expenses.

Q. I am showing you that that night account for living expenses and obviously these drafts of bearer checks upon this Bankers Trust Company a count must have been for something else.

Senator Thompson.—What time were they drawn?

Mr. Moss.—Between October 30 and December 19. At the same time you draw on the United States Mortgage and Trust Company \$4,800.00, October 25 \$2,500.00 — all bearer checks. In that period you have therefore \$33,000.00 from the Bankers Trust Company, \$3,300 from the United States Mortgage and Trust Company and \$2,050.00 from the Guaranty Trust Company, making a total of \$38,350.00 drawn out by bearer checks between October 30, 1912, and December 19, 1912. You don't mean to say that was all for living expenses? A. I'd consider that as all living expenses.

Q. You'd consider that as all living expenses? A. As far as my knowledge is concerned.

Q. Well, now, I think my purpose, Mr. Chairman, so far as the checks that have been disclosed are concerned, will be shown by the summary that I have made from Mr. Morse's statement which was furnished me. I find 123 checks drawn upon several banks, drawn to bearer, endorsed and cashed by Mr. Cohen, totaling \$96,400.00, which is an average of \$853.00 a check. I go just a little further.

Senator Thompson.—Did you draw those checks? A. Yes.

Senator Thompson.—Did he tell you what they were for when they were drawn? How did you get them? A. He just told me to draw a check to bearer.

Senator Thompson.—How did he do that? A. Asked me to do it.

Senator Thompson.—What did he call you? A. Mr. Cohen.

Senator Thompson.—He'd say, "Mr. Cohen, draw a check?" A. "Will you draw a check to bearer?"

Senator Thompson.—Did he tell you how much? A. Three, four or five hundred, whatever amount.

Senator Thompson.—That is all he would say? A. Yes.

Senator Thompson.—Then you'd write a check, he'd sign the check, then you'd go to the bank and get the money. You were with him six years, weren't you? A. Yes, sir.

Senator Thompson.—You'd have been there yet if he had lived. Then he wouldn't tell you, "Go to the bank;" you'd simply let him sign the check and you'd go to the bank and get the money. Then what would he do with it? A. He'd put it in his pocket.

Senator Thompson.—Anybody present when you gave him this money? A. Somebody may have been in the room. It was no secret about giving him the money. May I ask you a question? The total you give there of \$90,000.00 extends over five or six years.

Mr. Moss.—Extends from 1912 to 1914. Some of them run into 1915. A. I should suggest that that is not a large amount of money when you consider Mr. Freedman was a wealthy man and lived accordingly.

By Mr. Moss:

Q. He must have got his living expenses apart from you and through other checks, because there are whole stretches when he is not getting anything at all. These only happen to be the bearer checks. You don't mean to say he got his living expenses out of the bearer checks? A. I wouldn't say that.

Q. Of course not. I am not finding it peculiar that there are a whole lot of checks which are blind, concerning the disposition of which there is no record, totaling up an average of \$853 apiece, amounting to the sums that I have mentioned. Was there a complete set of books kept? A. I kept a complete set of books.

Q. You kept everything, ledgers down to cash books? A. Yes, sir.

Q. Wasn't there any entry in some books that showed what disposition was made of this money? A. It was charged up against his personal account, as living expenses.

Q. Was nothing charged against personal account but these bearer checks? And various sundry bills which were paid by check? A. Many of his checks for personal expenses were drawn to some firm or person.

Q. To some person? A. They went to the same account.

Q. There is nothing in the account to show how this money was used. Is that right? A. That is right.

Q. I will put this list in evidence asking Mr. Morse, who already has been sworn, was this statement from which I have drawn these checks made up by you for the Committee?

Mr. Morse.— Yes, sir.

Q. By examination of checks and books of account?

Mr. Morse.— By examination of checks, cancelled checks and check book stubs.

Q. Mr. Sherman, a question. You said there probably were other bearer checks than those I called for. Have you been able to find them? A. (by Mr. Sherman.) No, sir.

Q. Have you looked for them? A. I have not looked for them.

Q. How do you account for the fact that there may be other bearer checks than those which are shown upon this statement of Mr. Morse's? A. I didn't state that there were not any. I could not, so I had to state there might be. I really don't believe there are. Of course they know by the number of vouchers; they went over the vouchers quite a number of times.

Q. Have you checked up the vouchers against the stub books? A. No, sir.

Q. You simply don't know? A. No. I don't know.

Q. I think that is all from these two witnesses, Mr. Chairman.

Senator Thompson.— The incident is closed. We sent out a subpoena to Charles O'Malley, but it was returned. He left night before last and the report is that he went to Alexandria Bay. We inquired at the hotel which was given at the comptroller's office

as the place where he was stopping, but he has left there and gone to live at St. Lawrence Park. He was given process service there and then it developed that he had left the day before and gone over into Canada fishing. We have been unable to serve his process in Canada and he returned to New York. Mr. O'Malley's presence is very much desired by this Committee, and owing to matters which we will call the attention of the Committee through the apparent altercation and lack of understanding which the comptroller testified had existed between himself and the mayor of the city, Mayor Gaynor, and on perusing certain letters written by Mayor Gaynor and on investigation of certain facts which pertain to the administration of Mr. O'Malley in the office of the assessor of this city, to which facts Mayor Gaynor publicly made criticism when he became mayor, and with reference to those facts and with reference to the fact that Mr. O'Malley, notwithstanding this has been kept in the comptroller's office continuously in a confidential place and a place connected with that sort of thing, and owing to other facts which are in the possession of the Committee, it is very important that Mr. O'Malley's testimony be had. And Mr. O'Malley is in Canada. Refuses to come out, as far as I can find, until after this Committee adjourns. I don't care to make any further comment on it. If when Mr. O'Malley comes out of the woods, I mean out of the fishing water, he will come before this Committee; we will sit to hear him.

Mr. Moss.—He is under the direction of the comptroller, isn't he?

Senator Thompson.—I suppose so.

Mr. Moss.—The comptroller has promised to be present at a future occasion and to give us everything we want. That is one thing absolutely that we want.

Senator Thompson.—There is nothing else to take up. It is a kind of matter that won't pay to investigate unless it is done with authority. You appreciate that.

Mr. HENRY H. KLEIN takes the stand and, having been sworn testifies as follows:

By Mr. Moss:

Q. You have had some knowledge of public affairs in the city of New York for a number of years past. Now, we have been interested in the proposition that the debt margin, out of which subways might have been constructed by the city, has been frittered away by various people. Have you paid attention to that subject? A. I have, some.

Q. And have you published facts in connection with that subject? A. I have.

Q. One time you published a paper called "Klein's Weekly." A. I did.

Q. And in that paper did you call attention to what you called the uneconomic way in which the city was being administered and the way the debt margin was being used up? A. I did in practically every issue.

Q. And in making those publications, did you hold any officers of the city to account by name? A. I did. Those in office now.

Q. What officers of the city government did you hold to blame for these expenditures that you criticised? A. Particularly the mayor, the comptroller and the former president of the board of aldermen, Mr. McAneny.

Q. You are the gentleman that the mayor expressed a dislike for? A. I suppose so.

Q. You have published what you had to say about that uneconomical administration of the city government in such form that he, as well as all other citizens, could read it? A. May I say that I am not surprised that the mayor expressed any dislike for me, because his dislike in this instance is provoked by my work for this Committee. The mayor —

Q. Please don't let us get into the question of the personal dislike except so far as it may be related to actual subjects under investigation; the particular thing I want to call your attention to is that criticism and the facts underlying it which have reference to the wasting of the city's substance. A. That is just what I intended to say. The immediate provocation for the mayor's attack on me or his aspersion, is the fact that his attempt to

stampede this Committee and the town with his accusations against the priests didn't go as easily and as smoothly as he thought. My own notion is, and I think it is right —

Q. I don't care about that part of it. A. That is the climax of other things.

Q. Stick to this line that I am directing your thought on now. The disbursing of the funds of the city. What matter did you particularly refer to? A. I referred to all matters bearing on expenditures by the city of New York, particularly the South Brooklyn terminal matter, of which Mr. Mitchel is responsible as chairman of the board of aldermen and now as mayor; the court house improvement, so-called, at the city hall here, for which Mr. McAneny is responsible; for commitment of ten million dollars for waste of lands.

Q. How much was involved in the South Brooklyn matter? A. Mr. Mitchel's estimate is eleven million, Mr. Prendergast's is fifteen million. If the city purchases docks to the amount of ten million dollars it will make a total of twenty-one million. That report of Mr. Mitchell's was submitted to the Board of Estimate in July, 1911, or thereabouts. It was passed some time thereafter.

Q. Don't get into a discussion of any individual matter. Let's have them all generally first. You mention the South Brooklyn matter and give me the approximate figures for it. You have mentioned the court house. Now mention the last. A. Dreamland Park. The city took an option of one million dollars from William H. Reynolds. East River Park. An option for one million three hundred thousand dollars, from friends of the mayor and McAneny and I believe the comptroller. Seaside Park, Coney Island, which is no park at all, but a sand dune 250 acres in area. City took an option for one million two hundred fifty thousand dollars from friends of the comptroller. Mr. McAneny is a side issue in that. Altogether these projects, Dreamland, Seaside Park, East River Park and South Brooklyn Railway and the court house, totaled about forty-five million dollars. In an issue of my newspaper of June 14, 1913, I summed up the situation and asked in the headline, "How will New York City be financed during the next five years?" showing the city's available borrowing margin to be only eleven million dollars and showing

very clearly that the city had requests for improvements beyond the city's debt borrowing power to fulfill.

In every other issue I gave details of city extravagances and expenditures, summed up, as I say, in those particular projects which were the most important. I said in my newspaper in nearly every issue for the last six months of the paper that John Purroy Mitchel was not qualified to be mayor of the city, that he was unrestrained and his roots were not in the ground, and I say now —

Q. Don't let's do it in that way. Take the particular matters and discuss them.

Senator Thompson.—In the situation, of course, I don't blame Mr. Klein for feeling personally a little hot under the collar, as you say, but that question has come where there has no fact been given to the chairman of this Committee on the question which was raised, and we have assumed that there is nothing to the suggestion and no reason except the question of personal likes and dislikes which ought not to count as far as we are concerned.

Mr. Moss.—I want Mr. Klein to have the testimony that he gives rest entirely on facts. I want him to give facts and not his opinions.

A. I want to make it plain without going any further in this matter that I will stick to the records that I have. The mayor's statement to you does not cover the mayor because his statement originally aspersing me was not made to you. It was made to the public through the newspapers, and I intend to put on the record the fact that the causes that provoked the mayor was the fact that I was working for your Committee. It is due the Committee to have that put on the record straight.

Mr. Moss.—Mr. Klein, please follow the leading of my questions, if you please. A. I am going into that now.

Q. Wait a minute. Don't go into anything until you know what we are going to do. The point of these inquiries is first that the city's resources were frittered away and second that you published the fact. The matter of resentment takes care of itself. Any one can see it. The matters that are valuable to us are the establishment of the facts of the dispersing of the city's resources and who is responsible for it. Now you have enumerated the

matters which you published as being the lines through which resources were dispersed. A. I have enumerated some of them but not all.

Q. I want them all enumerated first and I want it down without any side issues getting in. A. Here is my issue of October 4, 1913, in which I state, "Here is the report of Messrs. Mitchel, McAneny and Prendergast on which the city's millions have been spent." This money spent for the purchase of a new court house site for six million two hundred fifty thousand dollars, with the expenditure of five million dollars for Dreamland and a million two hundred fifty thousand for Rockaway. I reprint the resolution of the Board of Estimate of July 13, 1911, specifying as a report of this Committee or resolution reported by this Committee this new court house site, Rockaway Park, Dreamland Park. In my issue of September 27, 1913, I said, "Mitchel and Prendergast advised the purchase of Dreamland and Rockaway Park from ex-Senator Reynolds and friends." I tell in my issue of September 6, 1913, about Mr. Mitchel's New York Central freight monopoly which means a great loss to the people of the city. Also on August 30, 1913, I tell of the gross overcharge on asphalt repairing on the Island of Manhattan, of the fact that the city is buying twenty-five million dollars worth of real estate on July 26, 1913, and so forth. Now, in connection with the subway matter, I went over the route of the Queensboro—

Q. Wait a minute. Let's get this thing in proper order. Having summarized these matters, it is clear from your testimony that week after week your paper called attention to the extravagance of these city officials and did so in a pointed way with headlines holding the officials that you have named responsible for it. That is true, is it not? A. It is.

Q. I have here several things which I will just refer to. Here is an article which says, "Would the city's real estate at forced sale yield as much as the city's net funded debt?" That is a discussion of the comptroller's report. Here is another one: "Dreamland a junk pile while city's populace swelters. Property bought for park purposes for a million dollars still unused at Coney Island." Another one I see is entitled "Public extravagance with taxpayers' money loudly denounced at mass meeting."

Another article is entitled "The city to lose one million dollars in excess awards of condemnation if report is accepted," relating to condemnation of the Flatbush avenue extension. Another article of May, 1913, "Two million dollars of city money wasted on Dreamland Park." Another, "Can New York's real estate survive the strain of the new three hundred twenty-five million dollar subways? Assessments and taxes are now at the highest point and must go higher because of the gigantic expenditure without return for at least ten years." A. I call your attention in that issue under the seven-column line under that picture —

Q. Another one is entitled "Who induced the Board of Estimate to buy Dreamland and Rockaway Park?" Another one is "New York is buying real estate for twenty-five million dollars. It will spend fifteen million dollars more if plans are carried out. Borough President McAneny wants the city to spend six million five hundred thousand dollars; John Purroy Mitchel wants to spend more." Another paper contains a picture of the Dreamland junk pile for which the city paid a million dollars. Another is entitled "Mitchel and Prendergast advise the purchase of Dreamland and Rockaway Park from ex-Senator Reynolds and friends." Another is entitled "Here is the report of Messrs. Mitchel, McAneny and Prendergast on which the city's millions have been spent." Another is "Will Comptroller Prendergast dare publish the prices paid by his real estate bureau privately acquired by the city?" And so it goes on with illustrations and various comments. I wish you would take up these matters one by one and tell us about them, being careful to state the result of your own investigation in a way that you can stand for and substantiate. What was the first one? A. In the New York Central West Side program yesterday you revealed some surprising facts. The South Brooklyn terminal project is just as bad for the city and its terms are no better than the terms for the dual subways.

In my issue of June 21, 1913, I began to tell what that program for the South Brooklyn terminal meant and I said, "City millions to be used for private benefit in South Brooklyn water front improvement. In the next issue, June 28, 1913, I specify (and I think facts have a direct bearing on the present situation), "South Brooklyn water front improvement means millions of

dollars to a land syndicate from the city." The plan of the terminal committee of the Board of Estimate for a marginal freight railroad along the South Brooklyn water front at an initial cost of \$11,236,000, including land for yard purposes, should be inquired into closely by the taxpayers of New York. The plan embraces the purchase of land assessed at approximately \$5,000,000, one parcel of which is to be used as a "classification yard." This parcel is situated behind the property that is being acquired by the State as a barge canal port in the Erie basin. This parcel of property is owned by a company in which ex-Senator Reynolds is the chief factor. Mr. Reynolds sold the city the Dreamland property. His claim to the State is \$1,800,000 for the property and an additional \$1,800,000 for "consequential damages" to the adjoining tract of land, which they own and which the city is to buy, to be used in conjunction with the marginal railway. If the claim for consequential damages is allowed by the State the city will have to pay a fancy price for the parcel which it intends to purchase for the classification yard. Testimony on the claims presented by the land syndicate is now being taken before Judge Haight in the Supreme Court in Buffalo. The claim was rejected by Attorney-General Carmody, who referred it to Judge Haight for judicial determination as to whether the State owns part of the land which the syndicate offers to sell for barge terminal purposes.

"The report of the terminal committee of the Board of Estimate also recommends the acquisition of the franchises and equipment of the Bush Terminal Railroad Company and the New York Dock Company for \$4,234,091, of which the Bush Company is to receive \$2,557,977 and the New York Dock Company \$1,676,120. The Bush Company is selling the city franchises granted to it by the Board of Estimate and the Board of Aldermen. One of these franchises was granted for twenty-five years beginning February 15, 1905, to operate a railroad on Second avenue, South Brooklyn, a stretch of 15,940 feet. The Bush Company has paid the city \$2,891.13 a year for the franchise, or a total of \$16,773.78 since the date the franchise was granted. It has also paid \$100 a year since March 8, 1910, for a franchise permitting it to operate on First avenue and 41st street.

“ Judging from the report of the terminal committee, these franchises would seem to have great value, and the award to the Bush Company would seem to be based on such a supposition. Under no circumstances should the report of the terminal committee be adopted and the water front railroad plan affirmatively undertaken until it is known exactly what the city is to pay for the recapture of the franchises granted by the city and how much of a gouge there is for the benefit of the land syndicate which is selling the city real estate for use in carrying out this terminal railway plan.

“ The city has \$6,500,000 of real estate lying idle and unused along the South Brooklyn water front. Under no circumstances should it increase this area of unused property. It paid William Bayard Cutting \$4,666,490 for the water front from 28th to 36th streets and it paid the Lotus Realty Company, identified with the Title Guarantee & Trust Company, \$847,284 for a similar piece of water front property from 59th street to 61st street, South Brooklyn. It also paid \$750,000 to J. Archibald Murray, a relative of William Bayard Cutting, for the South Brooklyn ferry property between 38th and 39th streets, and it paid the South Brooklyn Railway Company \$273,000 for land under water adjoining the ferry parcel, on which Murray held a mortgage.

“ The city also owns the Eighth Ward market adjoining the South Brooklyn ferry property, for which it paid \$850,000 more. Under no circumstances should it purchase an additional inch of land in South Brooklyn unless it is absolutely essential to the safety and well-being of New York. Profit to the city out of the proposed South Brooklyn water front railroad is *impossible* under the terms accepted by the terminal committee. The only profit from the undertaking will be on the operating freight company, to the New York Dock Company, to the Bush Terminal Railroad Company and to Irving T. Bush, who owns piers along South Brooklyn which he offers to sell to the city for \$10,100,000. The Bush Company wants to keep the warehouses, but is anxious to dispose of everything else, so that the profits of the warehouses from increased freight traffic resulting from the joint operation of the city's freight railroad will be increased. The company will

then be able to build more warehouses and make more money as the result of the city's profitless water front investment."

The Bush Company is also anxious to get rid of its docks because the city's rent from the docks is far less than private owners. The Bush Company receives more than one hundred thousand dollars a year. The city of New York gets nothing over seventy-five thousand for the best dock it has, Chelsea pier, for instance. If the city bought those piers at ten million one hundred thousand dollars, way beyond their assessed value, the city would pay them a large profit. There would be great increase in terminal shipping there. The warehouses of Mr. Bush would be very busy and he could build a whole lot more because of the low rental charge for the piers. The city couldn't charge as much rental for the piers as Bush. As far as the operation of the railroad is concerned, Mr. Mitchel's report provides for a return of five and four-tenths per cent on half the cost — seven million five hundred thousand dollars — the rest of it to come whenever they are able to pay it, so the Board of Estimate planned to separate the two charges, one charge that totals about seven million five hundred thousand for railroads, for franchises and for the construction of railroads, and the other for real estate to be purchased.

The chances are that the city would never expect to get a cent back on the amount invested for real estate on the theory that it is just like any other street-opening affair.

Well, now, in regard to the real estate, W. H. Reynolds, Mr. Mitchel's friend and a heavy contributor to Mr. Mitchel's campaign fund in 1913 — by the way, that money has never been accounted for in Albany — Mr. Reynolds obtained an option from the Board of Estimate some time before the city took title to the property. According to the minutes of the Board of Estimate which I have inside the comptroller's office, fixed an option price of one dollar thirty cents a square foot for the property owned by the First Construction Company, of which W. H. Reynolds is president. Mr. Reynolds paid, as I say, for the largest part of that property sixty cents a square foot, but he didn't take title to it, or his dummy, Charles B. Houston, didn't until May 17, 1913, which was only a few months before the city took title. I believe Mr. Reynolds had an option for two years on that property and

didn't pay a cent on it until title was passed either to his dummy or to himself.

Now, the comptroller had two experts to appraise the value of that property before the city took the option at one dollar thirty cents a square foot. They both agreed on a dollar and thirty-two cents a square foot. Mr. Ray was Mr. Reynolds' expert in the Dreamland matter and fixed the price of one million three hundred fifty thousand dollars, and so was Mr. Kenealy. Bearing on the South Brooklyn First Construction Company matter and the employment of Mr. Ray and Mr. Kenealy, I read the testimony of Mr. O'Malley given before—

Q. Is that the same Mr. O'Malley that Mr. Thompson has been trying to find? A. Charles O'Malley is sworn as a witness and testifies as follows: 'Q. Mr. O'Malley, what office do you hold? A. Appraiser of real estate in the department of finance, city of New York. Q. Did you some time ago employ some real estate experts to appraise the property under consideration? Mr. LaMotte: I object to the question. Chairman: Objection overruled. Mr. LaMotte: Exception. Chairman: Just yes or no, Mr. O'Malley. A. I did not. Q. Did the city of New York through you employ some real estate experts to appraise the property here under consideration? Mr. LaMotte objected to that. Chairman: Do you know, Mr. O'Malley? A. Yes, sir. Q. Did the city of New York employ experts to appraise this property? Mr. LaMotte: To that I object as incompetent, irrelevant and immaterial. Chairman: Objection overruled. Mr. LaMotte: Exception. Chairman: Just answer yes or no. A. No. Q. Did the comptroller of the city of New York employ experts to appraise the property? Mr. LaMotte: I object to that.'

Mr. O'Malley finally replied, after a number of objections, that he did not employ any, but that the comptroller did, and the chairman asked: "Did you have anything to do with the designation of those experts? A. No, sir. Chairman: I think that is all." This is on page 3789 of the record.

It appears Mr. Ray and Mr. Kenealy, who were appraisers of the Dreamland property for the comptroller, also appraised the property of the First Construction Company for the comptroller, not for Mr. Reynolds, and the appraisal for the comptroller there

was one dollar thirty-two cents, but Mr. Ray has appeared as expert appraiser for property in which W. H. Reynolds was interested at other times. I think before we get through I will have a memo of the property.

Now, the rest of that parcel owned by the First Construction Company or owned by Reynolds along the line of the South Brooklyn Terminal were both purchased at fifty-one cents a square foot and forty-six cents a square foot and the appraisers for the comptroller fixed the price, appraised the value at one dollar thirty-two cents and the comptroller accepted one dollar thirty cents, which meant two million two hundred thousand dollars for property owned by Reynolds which he offers, over his own signature, to sell to the city as president of that company, the First Construction Company.

My own notion is, and I judge from statements made by Howard Elliott, president of the New Haven Railroad, that it is a far cry for the city to actually build that South Brooklyn terminal. My own notion is that that South Brooklyn terminal job was framed up to sell real estate more than to construct the railroad, because Mr. Reynolds has, according to the record, claims before the State property to sell for barge canal purposes. At any rate, Howard Elliott, when asked recently, denied that the New Haven Railroad was interested in the construction of that railroad, the marginal railway, and other railroad officials have assumed an indifferent attitude. When the matter first came up and for two years thereafter the city officials contended and based their efforts to put this over on the great desirability for terminal railway that the railroads of the east, trunk lines association, was very anxious to operate that road as a freight line.

On the terms provided the option would be very expensive to the city directly, but much more expensive to the people, because it would give the railroad company the control of prices on every commodity that came through that South Brooklyn shore just as the New York Central plan is for the purpose of giving the New York Central a monopoly on all prices of products that come through the Hudson river. That is why Calvin Tomkins was so anxious to have the west side open for all purposes and why he opposed the South Brooklyn terminal proposition, and maybe why Mr. Tomkins was dismissed by Mayor Gaynor after the subway

dual contracts were put over and after an apparent understanding between them.

Q. Mr. Tomkins told me to-day his resignation was caused by his difference with the mayor about these terminal matters. A. They were in the hands of the Board of Aldermen. John Purroy Mitchel as president made two reports. It required only eleven votes to put the contract over and there were thirteen for it; Mr. Mitchel was the only one opposed, being three votes. He could very well afford to carry his opposition to the very last, but when it came to voting the contracts for construction it was a different matter with Mr. Mitchel so far as affecting the city's interest is concerned. The records of the Board of Estimate will show that on July 21st —

Q. Are you through with this South Brooklyn matter? A. I have covered that. On July 21, 1911, Mr. Mitchel voted to hasten the construction of the elevated line through Queensboro, Astoria and Corona through property owned by the Queensboro Corporation.

Q. Let's make a point. You are now going to discuss that new subway which runs on the other side of the Queensboro bridge out into Queens county. A. Out to Corona.

Q. Is that work substantially done? A. It is not.

Q. Isn't the subway substantially finished? A. The structure is up.

Q. But it is substantially finished? A. It couldn't be operated for at least nine months because there is no section —

Q. I am not talking about sections; I am talking about that structure. Is that structure finished? A. It is practically finished.

Q. Does it run through a populous territory? A. It does not.

Q. Is there any building around that structure which can be counted upon to give traffic out of which profit can be made? A. Less than 5,000 people there.

Q. You have examined the property yourself? A. I did for the purpose of finding out how many people lived there and if this expenditure is justified.

Q. Are there new extensions of the subway through populous territory not completed? A. Yes; the line to Brownsville has not

yet been begun, and it is only a short elevated line from the Eastland Parkway to the most populous territory in the city — one hundred thousand people in about a square mile.

Q. But this Queensboro line runs through an unproductive territory and is practically done. I think you said it connects with a tract of land somewhere out there. Q. This particular elevated line, costing about three million dollars, runs through Woodside, Elmhurst and Corona. The Queensboro Corporation owns property along the entire line and a particular half mile tract in Elmhurst. Part of that property is being farmed and the elevated structure runs overhead, and when I was out there week ago Saturday some nice farmers were plowing the ground for a large part of that section. This elevated runs mostly through Roosevelt avenue after it leaves Woodside, a new street through Queensboro Corporation property. The street is unpaved, no sewers, no water mains. There are less than four per cent of the cross streets cut through from Woodside to the end of the line, and those that are cut through are not cut through for more than two blocks, only a few of the cross streets being cut through as much as a half mile.

Q. Your idea is that this subway was put through to serve this particular tract of land? A. I have no doubt whatever that John Purroy Mitchel voted for the construction of the contract to gratify the Queensboro Corporation, which owns most of the property along that section, Mr. Mitchel having been the attorney for that firm at the time he voted to put the construction contract through. He was president of the Board of Aldermen at that time, and the firm of Mullen & Mitchel was employed ostensibly to draw a trust deed for the Queensboro Corporation, for which a fee of five thousand dollars was supposed to have been paid, but it so happened that within five days after Mr. Mitchel voted for the construction of this elevated line, and which, by the way, is a three-track, heavy girder line, the third track for express purposes (the road is about four miles long), two express stations on the Queensboro property, and the whole running time over that road as far as the third tracking is concerned is less than fifteen minutes, so it would seem as if the city's got a dead expense of steel up there that it does not need at this time.

Q. Hardly needs an express track? A. Only fifteen minutes on the local. There are only seven stations. Mr. Mitchel went to Europe five days after he voted for the construction of this elevated line, July 21, 1911. There had been no elevated line ordered constructed prior to that time except those structures that were in existence. The farthest outlying district was ordered first, and Mr. Mitchel went to Europe five days after he voted for this construction and stayed in Europe for about two months on pay from the city as president of the Board of Aldermen. When he came back his firm, Mitchel & Mullen, presented a bill for two thousand one hundred twenty-two dollars to the Queensboro Corporation for Mr. John Purroy Mitchel's expenses in Europe. My understanding is that when that bill was presented there was some objections among the directors. They said, "What does that mean? We didn't have any contract for expenses of that sort."

Q. What was he doing? A. Mr. Mitchel had gone to Europe with a contract in his pocket or in his safe in the office of Mullen & Mitchel for ninety thousand dollars, three per cent commission on three million dollars of Queensboro bonds Mr. Mitchel was to float for the company while president of the Board of Aldermen. Before going to Europe he had consulted the firm of J. & W. Seligman of New York, bankers, to make arrangements to meet the London representatives, European representatives, of that firm, and with that intention and with the intention of taking a vacation from the city because that is what he said he was taking at the time — nobody knew he had the contract then; it didn't develop for two years. He saw the Seligman people in Europe and didn't float the bonds.

Q. Then he came back without having floated the bonds and asked for his expenses? A. That is what I mean and he received — his firm did — five thousand dollars fee ostensibly for drawing a trust deed in connection with this bond issue, but actually the trust deed had been drawn by other lawyers, and the names of the other lawyers are Frederick Anderson of Strauss & Anderson, and it was afterwards submitted by the Anderson firm to Hotchkiss, Parker & McGuire, counsel for the Guaranty Trust Company. Mr. Mitchel's drawing of the trust deed was merely a perfunctory matter, if that much. Having voted to put this elevated structure

through Queens through the property owned by the Queensboro Corporation, which was issuing these bonds, it was a great asset to the man who was floating the bonds to be able to say that the property would increase greatly in value because of the prospects of rapid transit, and there isn't any question that Mr. Mitchel was smart enough to tell the bankers in Europe that prospect, but in spite of that fact he came back without having disposed of those bonds.

In connection with the sale of bonds for real estate, I call the attention of the Committee to the failure of the American Real Estate Company recently. The American Real Estate Company issued bonds on real estate in all parts of the country and sold them to sailors and soldiers, etc., and now the company is in the hands of the receiver. The elevated line in Queens, the one I am talking about, was to have been finished in January of this year. The structure is up, the stations are nearly finished, but no sleepers or ties have been laid and no tracks. The rails are on the ground. They have been on the ground for a year along the entire line, which of course is another loss of interest on a dead investment.

Q. What is the reason for that? A. They have not advanced that far to put the rails on, or else they are disinclined to do it because there is nobody to ride.

Q. It is a city investment? A. Yes. Mr. Mitchel maintained that he was opposed to the Interborough contract, which meant that he was opposed to the contract which included this elevated line. He voted in opposition to the Interborough contract which included this elevated line, but he voted for the B. R. T. contract which included the same line, both roads running over this common railroad through this section. In connection with the extravagances of the city government while they were trying to conserve the debt limit and during that period they were making apparently very strenuous public efforts to conserve the debt limit; they were increasing the assessed value of real estate a thousand million dollars in 1910 and 1911 in order to raise the margin for subway purposes. They were releasing dock bonds, seventy million dollars, by court adjudication to add to the debt limit so that the sufficient margin would be available for subway purposes and at the same time were relieving Mr. Reynolds of property he couldn't sell in

any other way. For instance, the South Brooklyn terminal matter and the Dreamland matter. In the Dreamland situation Reynolds was president of the Dreamland Corporation, which owned at one time the park known as Dreamland at Coney Island. The amusement part of the structure burned down in May, 1911, and the Title Guaranty & Trust Company of Brooklyn, which held the mortgage on the property, collected the insurance money — \$400,000.00 — and there remained a stretch of sand from Surf avenue over to the ocean, of which the city took seven and a half acres. That part of the property was covered with the debris of the fire.

Q. The people that owned Dreamland Park had it put out by fire. The park as a resort was put out by the fire and the people that owned the park then couldn't have customers come in to enjoy it and pay for the privilege, and their property was encumbered by a lot of ruins, twisted iron and broken piers and fallen buildings and the like. The whole of Dreamland was destroyed. And you say that Reynolds was president of the company? A. Reynolds was president of the company.

Q. So Reynolds had a ruined park on his hands, and it would have cost a lot of money to put that park in order for people to go to it? A. To rebuild it would have cost fully a half million dollars.

Q. And it couldn't have been done in that summer anyhow; couldn't get it ready in that time? A. Following that fire, Mr. Reynolds, as the president of the Dreamland Corporation, attempted to induce the city and finally succeeded in inducing the city, through Mayor Mitchel and Comptroller Prendergast, to acquire that property, that part of Dreamland, two hundred feet off Surf avenue.

Q. Was the park which they wanted to sell encumbered by the destroyed property? A. All of it. After the city purchased it, it appropriated twenty-five thousand dollars to remove the junk through the park department of Brooklyn. Now, Mr. Reynolds appeared before —

Q. Wait a minute. Did the city own any property on Coney Island at that time? A. The city owned a stretch of land about South Fifth street running to the ocean, used as a free bathing

place, where it had a large bath house. The total tract was fourteen acres, of which Reynolds had seven and a half. The condemnation commissioner's award was one million seven hundred and some odd thousand dollars, which the court has since declared excessive by five hundred thousand dollars.

Q. That award had been knocked out in the court? A. Lately. More important though than that fact is the fact that the city owned sixty-three acres of water front within a half mile of the Dreamland property.

Q. That is what I wanted to find out. They didn't need Dreamland Park at all? A. And President Miller of the borough of Bronx voted against the acquisition of Dreamland because, he said, the city for a small sum could reclaim all of the sixty-three acres and have nine times as much as Dreamland.

Q. Nine times as much as Dreamland availed them with a small expenditure of money? A. At a cost, President Miller said, not to exceed sixty thousand dollars for bulkheads and other purposes; and, in fact, a citizen of Brooklyn, whose name I haven't got now, but it is in the records of the Board of Estimate, offered to defray practically all of that cost for restoring that land or a large part of that cost. I don't recall the exact figure now, but President Miller's opposition was based on the fact that it was a waste of money to buy Dreamland. There may have been a reason why Mr. Mitchel and Mr. Prendergast were anxious to buy Dreamland.

Q. Did you in your newspaper suggest that there was a reason? A. I did.

Q. Never mind the paper. A. I did.

Q. What I want — A. When W. H. Reynolds gave this city an option to buy that property for a million dollars, when he as president of the Dreamland Corporation gave that option, neither he nor the Dreamland Corporation owned the property. The property was owned by Joseph Huber, who had acquired it as a result of a foreclosure of a judgment. He and Eugene Wood on December 29, 1909, obtained a judgment against Dreamland Corporation and that judgment was executed February 10, 1910. The property was sold at public auction March 30, 1910, to Huber and Wood and on September 5, 1911, the sheriff gave the deed to

Huber. On August 29, 1911, Huber acquired Wood's interest and on September 5, 1911, the sheriff gave the deed to Huber. On the same date Huber made a declaration that that property was held in trust by him. On October 7, 1912, Reynolds as president assigned his right in the award of the condemnation commissioners who were acquiring Dreamland to Huber as trustee, so Reynolds' interest was a part of Dreamland and the corporation's interest was a part.

Q. Who was Huber? A. Joseph Huber is a brewer in Brooklyn; is associated with Reynolds. On June 11, 1911, the Board of Estimate passed a resolution to obtain the park at a million dollars, interest at six per cent from June 1, 1911, title vested September 12, 1912.

Now, the testimony taken in condemnation proceedings show that there were one million five hundred thousand dollars of stock issued by the Dreamland Corporation and seven hundred fifty thousand dollars of bonds; that William H. Reynolds owned about three hundred thousand dollars of the bonds and Timothy P. Sullivan and Eugene Wood and a number of other prominent people bought them. Reynolds testified that he received seven hundred fifty thousand dollars of the stock to float the company and that each of the bond owners received fifty per cent of the face value of the bonds as a bonus. So Reynolds therefore had seven hundred fifty thousand dollars stock besides the bonds disposed of by the time the city took the option. However, Mr. Reynolds realized that the bonds would have a value if that option were exercised and he forthwith offered bondholders ninety per cent of the face value of the bonds for their holdings. Prior to that time the bonds were selling at about two hundred thousand dollars a share, or forty per cent of the face value of the bonds. How many of the bonds Mr. Reynolds acquired after the city acquired that property the records do not show, but the very fact that the option was on the records (the city had accepted the option immediately) put a great value on those bonds, which had little value before because the title company had taken the insurance money and because the rest of the value of the property taken by the city, as based on the city's assessed valuation, didn't cover the total bond issue or the face value of the total bond issue.

It should be noticed W. H. Reynolds was an appraiser in the Rockaway Park acquisition for the property owners. The property was owned by the Neponset Company, a subsidiary of the Title Guaranty and Trust Company.

Q. That has been referred to by the comptroller as being a place occupied by a tuberculosis sanitarium. Is the whole of it occupied by a sanitarium? A. Only a small part. No sanitarium was there when the city acquired it.

Q. Is that a park? A. It is not a park.

Q. What is it? A. A waste of sand.

Q. Can you get to it by trolley car? A. After you have ridden on the train for twenty-five cents from Rockaway Park. Then you must walk half a mile.

Q. Friends of these tuberculosis patients have to do all that to get to them? A. When the property was bought the trolley only ran to the beginning of Bell Harbor.

Q. What is the great advantage of this property that the city was induced to buy it? A. When the property was acquired the claim was made by a lot of worthy citizens who always come forward in such events, including the Bureau of Municipal Research, that prior to that time had opposed the park, that the great boon to the poor people of New York to get that park — the poor people needed that park — but Mr. Cutting nor any of those people who urged the park couldn't say how the people would get there or how they would get back.

Q. What I see is the city taking that far-away stretch of the desolate beach had to pass by a whole lot of property much nearer to the city. A. It certainly did.

Q. What was the reason for going out there? A. As they say it was to lay out a park for the poor people of New York. There was no suggestion of a sanitarium at the time.

Q. What developed in the real estate holdings, or the persons interested in that line? A. The property was owned by the Neponset Company, of which William M. Greave was the vice-president. William M. Greave is the president of the Realty Associates owned by the Title Guaranty & Trust Company. William M. Greave and W. H. Reynolds are related in several companies and Mr. Reynolds was one of Mr. Greave's experts

in the appraisal of this property and he appraised one million nine hundred eighty-six thousand one hundred eighty-six dollars.

Q. Then you trace a Reynolds interest in this stretch of ground?

A. There is no question, although he said he had no interest when he was on the stand. He was interested to the extent that at least a fee as an appraiser. There is no question of the community of relationship. The city took the option at one million two hundred twenty-five thousand dollars and the assessed value of that property in 1912 was nine hundred seventy-four thousand dollars and in 1911 four hundred ninety thousand dollars. The city acquired title in 1912. Now, the city had been offered that entire tract of land, 250 acres, and 150 acres additional, 400 acres only a few years before for a million dollars, or two hundred twenty-five thousand dollars less than option price. The Neponset Company bought that entire tract at what price is not stated. Probably considerable less than a million dollars. I think it is on the record somewhere.

Now, all these parcels of land in which W. H. Reynolds was interested and out of which he made large sums of money were put through the Board of Estimate by Mr. Mitchel, Comptroller Prendergast and Mr. McAneny before the campaign of 1913 for their re-election. I unhesitatingly say that there was an excess payment by the city in Dreamland, Rockaway Park, First Construction Company of at least three million dollars; that Mr. Reynolds profited largely out of that three million dollars, and that he spent a large part of that profit to elect John Purroy Mitchel mayor. He spent at least twenty thousand dollars which can be traced to elect Mr. Mitchell mayor, but it appears to be nowhere in the records filed at Albany, the statement of that money.

I failed to say that the same William M. Greave, who was the vice-president of the Neponset Company, who selected William H. Reynolds as an expert, acted as expert for W. H. Reynolds in Dreamland Park matter, Mr. Greave fixing a price of a million two hundred seventy-seven thousand dollars on the Dreamland property.

The money spent by Reynolds to elect Mitchel as mayor is not contained in the account published in the newspapers giving the

list of contributors of various sums of money and the amounts they contributed.

At the same time that the Board of Estimate, Mr. McAneny, Mr. Mitchel and Mr. Prendergast — bearing on that matter of the contribution by Mr. Reynolds to Mr. Mitchel's campaign fund — Mr. Reynolds paid for the 24-sheet posters put up in this city a week before the election day and which were printed outside of the city of New York, in Erie, Pa., by a non-union lithograph house. When those posters came to New York there was a question about putting them up because the union label was not on them, and they had a conference in Mr. Reynolds' apartments, frequently frequented by Mr. Mitchel prior to that time and thereafter. The American Bill Posting Company was authorized to put those posters all over New York, after consent had been obtained from the representatives of the lithograph union to put the stamp on, though the posters were not made in a union lithograph house. That permission was obtained at the importuning of Mr. Reynolds and by direction of Mr. Mitchel, and at the conference in Mr. Reynold's apartment was Mr. Mitchel's immediate representative outside of Mr. Reynolds, Mr. George Bell.

During the time that the city was acquiring these various park properties there was also an effort made to induce the city to buy a tract of land about fifty-six acres along the East river at Astoria. The property was owned then by the Woodward-Brown Real Estate Company, in which the Rickert-Finlay Realty Company had an interest. The Board of Estimate passed a resolution July 31, 1913 — I think Mr. Mitchel was then in the Custom House with Mr. McAneny and Mr. Prendergast — authorizing the acquisition of this property, and an option was presented by the owners of the property to the city authorities for a million three hundred thousand dollars. Condemnation proceedings were begun and now under way, and the city is of course obligated to pay the full amount of the award plus interest, and of course taxes during the progress of that condemnation proceeding.

After John Purroy Mitchel became mayor, Lamar Hardy, the present corporation counsel, appeared as one of the attorneys in favor of the owners of the property. The city experts say the property is worth from four hundred sixty-seven thousand to five

hundred thirteen thousand dollars. The claimant's experts claim from one million eight hundred thousand to one million eight hundred fifty-five thousand dollars. The city's representative has produced the map which was filed by the former owners of East River Park, showing that that particular park area had been dedicated to the city and was on that map and such pamphlets that they sold lots adjoining.

The city also claimed that one of the streets running through the property aside from any other dedication was dedicated to the city, and ten acres of this fifty-six acres is under water.

Borough President Miller objected to the purchase of this property on the ground it was inaccessible to the poor of the east side. Very few people living in Astoria are in the vicinity of this property. The East river at the place where this property is located is a whirlpool, and it would be dangerous to bathe there; yet the condemnation was authorized by the Board of Estimate.

Now, the fact that the city of New York and the Board of Estimate has accepted options on all these properties, three of which Reynolds and his associates are interested in, is an astounding thing because never in the history of the city has an option been accepted by the Board of Estimate in advance of condemnation. It was tantamount to instructing the condemnation commission that our experts think that this property has such and such a value, therefore be guided by it.

Q. Of course, the condemnation proceedings must have been affected by the option which the city accepted. A. One of the commissioners ignored the city's option; said the city had no right apparently to give such an option, and Judge Miller in rejecting the award of the Dreamland condemnation commissioners, held the same view and one of the employees of the corporation counsel's office, who has done valuable work for a number of years trying to knock Mr. Reynolds' scheme at the expense of the city, engaged in these proceedings, said: "You bet there will never be another option taken by the city of New York in the future."

Now, the Reynolds projects have a direct bearing on this South Brooklyn terminal outside of the Reynolds First Construction Company. Irving Bush, president of the Bush Terminal Company, who is a large beneficiary if the scheme went through, is

the largest owner of bonds in the estates of Long Beach, owning at least one million dollars worth. Mr. Reynolds is president of the Estate of Long Beach, Frank Bailey is treasurer. Mr. Reynolds is treasurer of the Blythebourne Water Company and a director. That company sells water to the city of New York and Brooklyn.

It might be interesting to the Committee to know that Mr. Bush, who is anxious to sell his property in South Brooklyn to the city, is planning a great terminal project at Bayonne, New Jersey, and will escape taxation here if this project goes through.

Mr. Reynolds, who is the crony and associate of the mayor, leases various parcels of property to the city of New York and the mayor, as president of the Sinking Fund, votes on those leases. Mr. Reynolds' Long Beach Estates Company has a building at 42nd street and Lexington avenue which it leases and the city of New York in turn pays him several thousand dollars a year for rental in that property.

All these parcels of property on which options were accepted by the city should have been appraised first by the comptroller of the city through his real estate department, of which Mr. O'Malley is the head, and, I believe, Mr. O'Malley either appraised some of these parcels or obtained appraisals for them. I think Mr. O'Malley made an appraisal in the matter of the East River Park property before the option of one million three hundred thousand was accepted.

Reverting to the mayor, I want to say, Mr. Moss —

Q. Be careful, Mr. Klein, to keep to facts. We have what you have given to us as facts, so please keep personalities out of it as much as possible. A. I am not going to inject any personalities, Mr. Moss, but having put these facts on the record I challenge the mayor of the city to come here and refute them. He failed to come here before this Committee and explain what he meant by aspersing my record and I dare him to come before this Committee now and answer what I have put on the record.

Q. Are there any more proceedings that you want to discuss? A. I think I will let it go for a while.

Q. I want to direct your attention to a transaction that is pending regarding piers 8 and 9 on the North river — a lease to the

Lehigh Valley Company. Have you, at my request, been looking into that somewhat? A. I have.

Q. State what you find about that. A. I find that the city of New York is evading the borrowing of money for public improvements by the issue of corporate stock which it should do, in which corporate stock is never at a higher rate of interest than four and a half per cent. I find that the city is borrowing two million seven hundred fifty thousand dollars from the Lehigh Valley Railroad to construct this property and that it is paying, or that the Lehigh Valley Railroad is paying five per cent.

Q. Which would be charged up to construction? A. Which, of course, the city of New York must repay and that repayment to the Lehigh Valley road will be made by a lease to those two piers, at such rate as the city decides which is to amortize the loan, so to speak, in 39 years.

The city of New York leases docks for only ten years. I don't know whether there is a legal prohibition against longer leases — I think there is — and it gets around that prohibition by leasing for ten years and a renewal of ten years. The city of New York has made a contract with the Lehigh Valley Railroad, which is a terminal property in this city, for ten years and three renewals, twice ten and once nine, altogether 39 years, in order that in that in that time the entire expenditures may be amortized.

Now, the terms of that contract leave the city in a very bad position. Under the contract the railroad has the giving out of the construction work for those piers and the railroad makes its own contracts with contractors to build those piers. As I understand it, it allows the company to offer the contractor cost plus ten per cent profit for construction, five per cent for engineering and ten per cent for contingencies which would increase the actual cost by twenty-five per cent, all to come within this two million seven hundred fifty thousand dollars.

Now, since that contract was let in December, 1913, the Lehigh Valley sub-let pier No. 9 with the consent of the city authorities, the Sinking Fund Commission, of which the Mayor is chairman, to the Central Railroad Company of New Jersey, and since that sub-lease, and on June 5, 1916, the dock commissioner, R. A. Smith, has requested the Sinking Fund Commission to permit the

Central Railroad of New Jersey to lease pier No. 9 to the United Trust Company. I believe the dock commissioner has acknowledged, in reply to some statements recently, that he was a large stockholder in the United Trust Company. I have not asked the Sinking Fund Commission the final action on that request, but I suppose it was granted, because Commissioner Smith is rather influential with the administration that now prevails.

Q. Wait a minute. That contract provides for ten per cent as a profit upon the costs to be allowed by the city and collected in the form of rental, but it provides also for certain accessories or machines, appliances, which are to be charged for extras to the ten per cent. Haven't you got a list of those there? A. I don't think it comes in this contract between the city and the Lehigh Valley.

Q. That cost has got to be allowed. That is a fact, isn't it? A. I don't see it in this contract.

Q. What does the contract say the company may be allowed for construction? A. It does not go into details of that, except my information is that the borrowing of two million seven hundred fifty thousand dollars from the Lehigh Valley is on the basis of payment made by the Lehigh Valley for dock improvement. The details of the expenditure by the Lehigh Valley for construction must be filed with the dock commissioner and the dock commissioner should have a record of the expenditures made under that contract.

Q. Paragraph 9,

“ For the purpose of ascertaining the cost of improvements on said property, the party of the second part shall file in the office of the Department of Docks and Ferries within a reasonable amount of time a sworn statement of the amount of money expended for said improvement as more particularly described in paragraph 5, and if such amount shall be approved by the commissioner of docks, such amount shall be fixed and determined upon as the cost of such improvement.”

Now, the contract which has been made by the railroad company with Henry Steers & Company as builders provides for a ten per cent profit plus certain allowances. Have you got those

allowances? A. Plus five per cent for engineering, ten per cent for contingencies.

Q. Those are included in the sum, aren't they? A. That contract was made May 19, 1914, between Henry Steers and the railroad.

Q. I have seen that contract myself and I have stated that I found in the contract between the Lehigh Valley Company and Steers Company, the contractors, these provisions substantially: Provision for ten per cent to be allowed in addition to the actual cost, the ten per cent allowed above on actual payroll charges to cover all supervision, office expenses, overhead charges of the contractor's profit. Also the following unit rates covering fuel, oils and necessary supplies: A large pile driver, \$20 a day; a small pile driver, \$12 per day; a land pile driver, \$10 per day; a floating derrick, \$10 per day, and an erection derrick, \$15 per day; floating something or other — I can't make out my own writing here — \$15 a day; a hoisting engine, \$5 a day; land concrete mixers (doesn't say how many), \$5 a day each; floating concrete mixers (doesn't say how many), \$12 a day each; dock scows (doesn't say how many), \$7 a day each; coal and water barges (doesn't say how many), \$7 each; catamarans (doesn't say how many), \$1.50 a day each. The contract is for tearing down and disposing of old material on the sites of piers No. 8 and No. 9; also the dredging, bulkhead walls, bulkhead sub-structures and super-structures for piers No. 8 and No. 9, as shown by maps and specifications in the chief engineer's office of the Lehigh Valley Railroad Company and as per special directions of the engineer in charge of the work under the general supervision of the chief engineer of the railroad company, the work to begin at once, to be completed as soon as possible; for all labor, cost plus ten per cent; for all actual cost of material, cost plus ten per cent. That means that in all the work and materials it is ten per cent, but there is, in addition to the ten per cent, this rental of many appliances and mechanisms for the doing of the work. Can you tell me, Mr. Klein, that nothing has been filed in the comptroller's office to show what charges have been made? A. No records or report of any kind.

Q. In the chief engineer's office of the railroad company yet, but eventually got to be submitted to the city, because it is part

of this contract. A. Also in the contract that the dock department should have the complete record.

Q. The result of it is that the city is practically borrowing money to build these docks. The docks are to remain as the property of the city, but to be subject to a lease which, with its renewals, amounts to 39 years and the city, for not issuing bonds but going into this arrangement, will be subjected to a cost of five per cent instead of four and a fifth per cent if it was in bonds, and the city, through this arrangement instead of a lease of ten years, which is the ordinary kind of lease, is subjected to a term of about 39 years, and from what you have discovered one of these docks is to go to the United Trust Company? A. Another way of borrowing city money without affecting the debt limit, and they can keep on doing that until the town has nothing left and can never repay until the town is in the hands of private individuals. The South Brooklyn terminal project is along the same line. There are other contracts being made on this new method of using city money without counting against the debt limit.

Q. Without being noticed. Now, this matter I state for the guidance of the Committee, was not discovered by counsel or by any investigator, but somebody that was evidently concerned in these matters being somewhat annoyed, possibly a rival contractor, sent a copy of this contract to the counsel of the Committee and told them that if they would look it up they'd find a new method of using the city money and the result of that little tip is this testimony. Can you state any of the persons interested in the Queensboro Corporation whose names would be of interest to the Committee? A. I think Marvin Scudder is interested. He is a stockholder or interested in some other way. Wm. H. Williams was an officer at the time Mr. Mitchell was a lawyer. I don't think he is with that company now.

Q. Is that all, Mr. Klein? A. I think that is all.

Q. Is Mr. Moses here? A. I didn't send for him.

Q. He phoned he wanted to come down.

Mr. J. B. MILLER is recalled and takes the witness stand.

Mr. Moss.—You heard the testimony of Mr. Klein with reference to the South Brooklyn terminal improvement and you can tell us something about the conditions of the title there. Will you

do so? A. Yes. The condemnation proceedings are now pending affecting about twenty odd blocks. I am speaking — I didn't intend to come here to testify on this subject, so my figures may be a little inexact because I am only carrying this matter in my memory, but I think the city is undertaking to condemn about twenty blocks and to pay several millions of dollars on the theory that these people to whom they are going to pay these several millions of dollars, with whom ex-Senator Reynolds is interested —

Mr. Moss.— Do you know that as a general matter? A. I know it appears on the record that ex-Senator Reynolds' dummy held this property for a while just before the dealing with the city and this property instead of belonging to these people in fee, to whom the city is going to pay several millions of dollars, belonged to the city of New York. The old city of New York owned the Brooklyn waterfront, as you may possibly know, to the high water mark. The high water mark included these lands which are now being condemned. There were some acts of the Legislature passed in '57 and the '60s, authorizing the dock owners to dock out on getting the consent of the city of New York. I believe they never obtained the consent of the city of New York but they did dock out. Instead of docking out they built solid blocks of land so that now these many acres of lands occupy a solidly filled in space, and for these rights to fill in, the present owners of those rights are being paid as though they were owners of fee, because the condemnation proceedings have not gone far enough back to disclose the fact that those people who are getting the awards don't own the fee but that the fee is in the city although in one respect they did go far enough back. Very curiously, the city introduced evidence which shows that all of this land was once land under water for the purpose of claiming that the city still owned the streets so that the city should not have to make compensation for the streets, but for some inscrutable reason the corporation counsel failed to draw the conclusion that if the city owned the four streets around a block, because those streets were under water, it did not also own the block in between those four streets and therefore the obligation for the owner to prove title to the city, which they cannot do.

Now, the claim of the city has been sustained as to the streets around the blocks, but in the blocks owners are receiving the awards in fee amounting to millions of dollars, when at most they have only the right to dock out, and there has been a curious case recently decided on the north shore of Long Island in which the Tiffany family was interested which is very important.

The town of Oyster Bay had a grant of land under water and Tiffany's obtained a later grant of land under the state. The state forgot about this former grant, or overlooked it some way, and the Tiffany's went and built out over this old grant. Then there was a decision that this land belonged to the town, and then Tiffany's tried to stop the town from pulling down the buildings which Tiffany had put up and he has been refused an injunction within the last few days, so that the city would have just the same right to pull everything down that is there and occupy these many blocks of land. It all comes through ex-Senator Reynolds' dummy. I haven't the dates, because, as I say, I did not intend to testify here, but just before the city voted to accept the land, his dummy acquired an option and then the title passed to a corporation in which they organized —

Mr. Moss.— This is quite similar to the situation up on the Hudson river. A. Yes; very much the same, and very much the same as Dreamland matter.

Mr. Moss.— Yes. It looks like a concerted action. A. It is concerted action and I'll show you how it is concerted.

Mr. Moss.— Wait a minute. Mr. Reynolds may be interested in those but he is not interested in the Hudson river. Who is the central individual around whom this thing turns? A. It is a deal. If you will look into the laws of 1911 you will see chapter 777 is the law under which the Hudson river waterfront is turned over to the New York Central. If you will look two acts ahead of that you will find a law, I am speaking now from memory, under which terminal freight-house corporations can be formed and terminal railroads can be formed and they were passed on the same day. There is only one bill between them and that bill between them relates in some way to the subject, and under this bill about the water front terminal railroads, the railroad is

incorporated, which is being built along the Brooklyn waterfront, or which it is proposed to build, which as everybody says is backed by the Long Island and Pennsylvania, so that the Long Island and Pennsylvania are to have the Brooklyn, while the New York Central is to have the Hudson waterfront. That is the deal. And the question is whether it will come through. As to that plan about this railroad, it is utterly impossible to build a railroad the way they propose to build it, because they have to cross two bodies of water, one the Barge canal terminal, which under the Constitution they cannot do. The state has condemned land which comes back and cuts right through the course of this proposed railroad.

Mr. Moss.—This is the South Brooklyn. A. So that they cannot carry out their plan of a railroad crossing the land which has been condemned by the state, and if they did cross it they would destroy the Barge terminal and after they cross that terminal they come to the Quo Vadis canal, which they also have to cross. For a railroad to cross those two bodies of water in so close connection would require piers as large as the Pennsylvania had to build to cross over to the island. The two things come so close together it is not a passenger but a freight railroad that they would have to build, and they'd have to use cement piers.

The proposition they have doesn't provide for anything of the kind and they have this ridiculous idea of having a classification yard right there. The plan originally thought out by Calvin Tompkins called for boat landings there and a classification yard would have been very proper, but now that has been all abolished and the landings would be at one end owned by Mr. Irving Bush's terminal and the other one up by the terminal railroad. They would have to run the cars half the length of the boat to get to the classification yard, and half would be classified in the yard and half would be carried on unclassified. Therefore a classification yard would be entirely out of place. There are a great many other objections, and so the United States Real Estate Association, of which I am counsel, has brought a suit to restrain them from going on with that matter. That complaint was served last summer, I think, but nothing further has been done in the matter. The case has not been tried. There are a great many other objections which I don't now carry in mind.

Mr. Moss.—In your opinion, are our city officials falling blindly into this situation, without knowing what they are doing, or do they know what they are doing? A. I would hate to think, Mr. Moss, that they were so ignorant and stupid as to be blind in the matter. I have never found them blind in any transactions I have come in contact with.

Mr. Moss.—Anything else you want to add? A. No, sir.

Mr. Moss.—All right. Mr. Chairman, I am going to ask you to hear Mr. Moses. He has come down a long distance to be heard for a moment

Mr. PERCIVAL R. MOSES takes the stand and testifies as follows:

Mr. Moss.—Mr. Moses, you were kind enough to write a letter to me at the Committee here and then to call me up on the telephone and tell me you were going to leave town. I told you to come right down. I will lay this situation before you and then invite your testimony.

Mr. Moses.—I have been fighting the rates of the New York Edison Company for the past ten years and these rates are inequitable so far as the small consumer is concerned. The small consumer is charged the greater part of the profit in order to allow the large consumer to buy at a low rate. I brought these questions up before the Public Service Commission through counsel in 1907, I think was the first time, and the hearings were held from about 1910 to 1914. No decision was rendered for nearly a year.

Commissioner Maltbie, who had heard all the testimony in the case, practically alone, recommended that the small consumer be given a rate of six and a half cents a kilowatt hour. The balance of the Commission overruled Commissioner Maltbie and announced that a rate of eight cents would be given — announced that the rate would be reduced from ten to eight cents.

A hearing was granted in the office of the Public Service Commission and Commissioner Williams read the opinion granting a rate of eight cents, and he added the rate as eight cents per kilowatt hour of electricity.

Mr. Arthur S. Luria, my counsel in the matter, arose and pointed out that the Edison rates covered not only the supplies of elec-

tricity to the small consumers, but also the supply of lamps, and where the supply of lamps was not included, a rebate of a half-cent a kilowatt hour is granted, so that if the Edison Company's rate were made eight cents per kilowatt hour for electricity without lamps, it is equivalent to eight and a half cents a kilowatt hour.

I spoke on the same question and the Commission proceeded to make the rate eight cents per kilowatt hour of electricity.

This difference of half a cent a kilowatt hour on the retail consumption amounts to something over half a million dollars a year, taken away from the small consumers. In my opinion, and in Commissioner Maltbie's, the small consumer is entitled to a rate of six and a half per cent and that would amount to over three million dollars a year.

Since the new Commission has come into existence, I have endeavored to have a rehearing on the subject and the position has been taken that the matter was settled because of some agreement between the old Commission and the Edison Company that the rate should stand for three years.

Mr. Moss.— Was there no official record of that agreement? It is not generally known.

Mr. Moses.— I don't know of any official record, but it is generally known among the Commission and among everybody else that knows anything about the subject.

Mr. Moss.— Do you consider that a proper proceeding to make a decision and then say it won't be ordered for three years?

Senator Thompson — The Public Service Commissions Law gives them that right.

Mr. Moss.— Is it proper?

Mr. Moses.— It seems to me —

Senator Thompson.— That is the trouble with these rate cases. If the Public Service Commission would spend the time in the next three years to get an actual physical valuation of the property here necessarily devoted to the electric operation, they would be in shape at the end of three years to very quickly make a rate based on real knowledge. The difficulty with all the rate making down here in the first district is that they have had no practical

physical valuation on which anybody can rely. The Public Service Commission has been in for eight years; they could get this valuation. The company is entitled to earnings on the amount of capital stock in issue and re-issued and recapitalized, but they are entitled to earn on the amount necessarily employed in the business.

Now, the New York Edison Company have got here, on the island of Manhattan, an apparent investment of over one hundred and fifty million dollars. I will say that an expenditure of twenty million dollars will duplicate their plant and their equipment, line, and all that. With the congestion here in this territory it is the cheapest place in the world to deliver electricity from the place of production — the cheapest distribution in the world on account of the fact that they can serve so many customers on one wire. I am chairman of the board of directors of a small lighting company in the country, which sends electricity seven miles in the country, with no village along the line at all, and sell it for eight cents a kilowatt and a minimum rate of fifteen dollars a year to a customer, and they make it pay. Pays six per cent on three times the amount that we paid for the stock in the concern.

Mr. Moses.—In regard to the physical maximum rate, the Public Service Commission has only fixed the maximum rate at eight cents. That is probably justified in some particular instances, but Commissioner Whitney spoke to me once and told me that it doesn't stop them from fixing the rate through retail consumers that are charged at a lower rate, because all they have done is to fix a maximum rate of eight cents. This is the point that stands out: Here is the condition existing in New York that these retail consumers — take my own case. I am a tenant in 272 West 90th street, apartment, and there are 48 apartments in that house and there is an apartment house 120 feet away, on 89th street, owned by the same person. The Edison Company has combined the current supply for those two buildings under one contract, though the service is in a separate street. They sell the current to my landlord at four and a half cents a kilowatt hour. He sells it to me at eight cents — a profit of three and a half cents, and all he does is to rent a meter from the company or buy it

himself and has the meter read. Formerly the Edison Company supplied the meter and read the meter and all they had to do was put it on the rent bill. Certainly there should not be any possibility of a middle man stepping in between a public utility and the consumer.

Mr. Moss.—The Public Service Commission would give you the right to distribute it. You can duplicate the contract of the Third Avenue Railway Company and get so rich you could be independent to tell some of the neighbors what you think of them.

Mr. Moses.—In this particular case, you have to go entirely around the block to get to the other building.

Mr. Moss.—They don't cross the street?

Mr. Moses.—No, but there are cases where buildings within one hundred feet of each other are combined under one contract.

Mr. Moss.—If they can afford to sell the Third Avenue Railroad for two and fifty-two hundredths per cent of what they sell to you for eight cents, any tenant of a building should be entitled to whatever rate is given to the owner of that building.

Mr. Moses.—The Commission seem to have settled on the terms of the order. I don't agree on the order. It was a compromise.

There is another case down on Fulton street where four buildings are combined in one contract and the rate is reduced nearly 40 per cent by the combination. The ultimate consumer—the small consumer—has received no benefit from the so-called reduction of the rates by the Public Service Commission. Perhaps some, but nothing like what he is entitled to. The benefit has been reaped by the owners of the building.

Mr. Moss.—Mr. Moses, what is your business?

Mr. Moses.—Consulting engineer.

Mr. Moss.—In electricity?

Mr. Moses.—I am president of Moses, Pope & Messer, Inc. We do all kinds of engineering. I am owner of the Isolated Plant Publishing Company, a magazine devoted to the interest of private power plants and we were very frank in stating to the Public Service Commission, bringing up this case originally, that it happened

that the presidents of the private power plants and interests of the small consumer were identical, because a high rate charged the small consumer enabled the electric company to offer an extremely low rate to large consumers and thus force out the private plants. The only thing the Public Utility Company had to do was to get an average rate which would give it an average investment, so they could charge a low rate to the small consumer.

Mr. Moss.— What do you think of this — here is a splendid, modern building we are sitting in, filled up with city departments, cost about twenty million dollars, with no electric plant in it, but dependent upon this monopoly outside, the Edison Company. Do you know the price charged?

Mr. Moses.— I had the price figured — price is the same as the large wholesale consumers. It depends on the total use, I shouldn't think it ran over three cents.

Mr. Moss.— What do you think of that as an economic feature?

Mr. Moses.— It is entirely wrong. We have installed a plant in the Columbia Trust Company and we are paying for it out of the saving from the Edison rates, which were about three and a third cents per kilowatt hour.

Senator Thompson.— How fast are you paying for them?

Mr. Moses.— We have paid eight thousand dollars in eight months and the plant cost twenty-two thousand dollars.

Mr. Moss.— Any building costing a million dollars that has to heat itself, ought to be able to supply its own electricity at much cheaper rates than it can get from outside companies.

Mr. Moses.— In every building down town south of Chambers street, which is over twelve stories in height, with the exception of 80 Maiden Lane and the World Building, I think, have their own plant.

Mr. Moss.— And don't those buildings have special rebates that are using the Edison Company's current?

Mr. Moses.— Excepting the New York World. It has no space, it needs all its space for its printing press. They could save thirty to forty thousand dollars a year but they can't spare the

space. It has only one cellar and it can't get any more. 80 Maiden Lane has another reason.

Mr. Moss.—Here south of Chambers street, where almost every building has its own private plant, we have the city of New York playing into the hands of the Edison Company.

Mr. Moses.—The Bowling Green Building has a sub-station —

Senator Thompson.—Even the State of New York, bad as it is, furnishes its own electricity. Governor Higgins did this and said nothing about it.

Mr. Moss.—Do you know anything about the plans for the new court house?

Senator Thompson.—Governor Higgins did a few things during the time when some other governors would have spent —

Mr. Moss.—Do you know whether the plans for the new court-house include local electricity?

Mr. Moses.—I don't know. From what I read, that is one of the things they were going to cut out. The people with whom I am associated wrote to the Commission, offering to install — asked permission to submit a proposition to install a plant at our own expense and sell current at a lower rate, giving the city the option of purchasing it at any time.

Mr. Moss.—That is pretty nice.

Senator Thompson.—You heat your building here with steam. You can use that same steam for heating to generate power.

Mr. Moses.—We kept track of the cost of coal at the Columbia Trust Company, for December, January, February and March — we used the same coal we did in previous years in very large buildings requiring a great deal of heat. That is the reason a private plant can compete. Otherwise it would not —

Mr. Shuster.—What is the smallest profit?

Mr. Moses.—In office buildings you can go into a building 50 x 100, 12 stories — it is hardly less than 100 x 100 in a 12-story building, in some of those used for selling only and it wouldn't pay. Every hotel, with the exception of two or three in the city, have their private plants.

Mr. Shuster.—Suppose you got all of that business. What would happen in the way of rates to those that could not be accomodated by private plants?

Mr. Moses.—I worked that out once. I looked up and found the total amount of the New York Edison Company from the so-called wholesale customers allowing merely for the fixed charge on the investment necessary to supply those customers; there's not five hundred dollars profit on the wholesale business, so you can see the effect on the rates would be nothing to speak of if they lost their wholesale business. It is very easy to determine because we know what the cloak factories and those buildings use. We know what the Edison Company is charging for its plant and equipment. It is easy to figure the fixed charges and the profit and what they get.

For example, the Gimbel Building had a maximum current at its command at any time of twelve hundred kilowatts. If the Edison Company is capitalized at eight hundred dollars a kilowatt, allowing two hundred fifty dollars a kilowatt, which is cost of plant and connections, you have an investment of over three hundred thousand dollars and their total expense is in the neighborhood of forty-five thousand dollars for that building for that term. Besides that they had to pay a rent. You see the effect of losing that business would be very small.

Mr. Moss.—I guess that is all, Mr. Moses. Thank you very much.

Senator Thompson.—We will suspend until to-morrow morning at 11 o'clock.

Adjournment.

JUNE 30, 1916

EXECUTIVE SESSION

MR. WILLIAM R. WILLCOX, witness; MR. MOSS, Examiner.

Q. Mr. Willcox, do you know Emmet Queen? A. Yes.

Q. Were you interested in any companies that he was interested in? A. I don't think I was.

Q. As counsel or otherwise? A. Mr. Queen was in my neighborhood in the country, Glen Cove. I became acquainted with him in the summer of five or six years ago. He occupied a house near the one that I rented at Glen Cove. There I became acquainted with him in a neighborly way. He came to me — shall I give my account of this?

Q. Just as you like. A. He came to me with the idea of associating with me in some business matters that he had in Pennsylvania. He said something about some electric railroad or some electric companies, or some power companies. I told him I had no time to spend on those matters at that time. If you will find out about Mr. Queen you will find he has very large business enterprises. I had no relation with him and any company but I did endorse a note with him for \$35,000 that made me a good deal of trouble after that, because I had to pay part of it, and then he wanted me to recommend him to different people about that time and I recommended him to several lawyer friends of mine — I don't know who all, now — but he asked me for letters of introduction and I gave them to him.

Q. Were those letters of introduction for the purpose of interesting men in his business enterprises? A. I introduced him as a friend, a man who lived in a house worth \$250,000.

Q. Did you understand he was going to these people to endeavor to interest them in business enterprises? A. That is what I gathered. He said he was not acquainted in New York and wanted to know if I would introduce him to different people.

Q. Was one of the companies the Peoples Light and Heat Company, at Johnstown, Pa.? A. I don't know. I have no interest in any company. The way I became, well you might say *tied up*, with him at all was that I did endorse a note for \$35,000.

Q. Was that a business note? A. It was a note he wanted me to accommodate him to the extent of —

Senator Thompson.— An accommodation note.

Senator Lawson.— His personal note? A. That is my recollection.

Senator Lawson.— Not a note of any of his corporations? A. I am pretty sure not. That you could find out.

Mr. Moss.— Was it to be used in a business enterprise? A. He said that he had a lot of enterprises and that he wanted some money temporarily. Now, here is a man living in a house worth \$250,000, and I thought he was a millionaire, and I wasn't going to get into —

Q. Did you know whether any of these persons to whom you introduced him loaned him any money? A. I don't know definitely. I think some of them did.

Q. Did you introduce him to any of the persons composing the firm of Lee, Higginson & Company at Boston, bankers? A. Not to my knowledge.

Q. To Gardiner M. Lane? A. I don't know Gardiner M. Lane except that I had met him casually in the subway business.

Q. Lane was a director of the Interborough. A. I will tell you when I met Mr. Lane. At the time we were having the investigation in which I was counsel Lane came over here to protest against those investigations but I didn't meet him at any time outside of the negotiations for the dual contract. I didn't give Mr. Queen or anybody else any letter of introduction to Mr. Lane. I don't know him well enough.

Q. Here are eighteen judgments, here, against Queen beginning January 27, 1911 and running to December 11, 1915, eighteen judgments aggregating \$263,684.52. Among these judgments is one dated March 3, 1911 for \$13,312.29 in favor of Henry L. Higginson, Gardiner M. Lane and other persons composing the firm of Lee, Higginson & Company. This judgment was assigned to L. A. Osborne and the judgment was entered by Strong & Cadwallader. Now, did you ever give Queen a letter of introduction to Mr. Robin? A. I don't remember so doing. I may have done

so because I knew Robin for years and if he would say that I gave him a letter, I wouldn't dispute it. I have no recollection of so doing. If Mr. Queen had come to me and asked me to give him a letter, I presume I'd have done so. As man to man I had no relations with Mr. Queen.

Q. At that time, at the time I have in mind, was while Mr. Robin, it is said, was in control of some bank or banks in New York. Would you have expected, if you gave him a letter of introduction, that he would approach Mr. Robin on the subject of getting a loan? A. I don't think that would have entered my head.

Q. What do you think he wanted this letter of introduction for? A. Here was a man who was my neighbor, and a pretty wealthy man, who came to me and when I told him I could not invest money in various enterprises he asked me if I knew some one — so-and-so — and I gave him a few letters, as I told you, just a friendly act. I don't know whether I gave him a letter to Mr. Robin or whether I did not.

Q. Now supposing, Mr. Chairman, I don't want to keep Mr. Willcox here any longer than necessary. I think we ought to listen to Mr. Robin at this time and let Mr. Willcox hear Mr. Robin and let him say anything that he wants to.

MR. JOSEPH G. ROBIN is sworn by SENATOR THOMPSON, and testifies as follows:

Mr. Moss.—Mr. Robin, was there a time when you were a man in a large business, and reputed to be and believed yourself to be wealthy? A. There was such a time, yes.

Q. And did you at such time have relations to some banks in New York which gave you substantial ownership and control? A. Yes.

Q. Were you the owner of the Railroad Company called the South Shore Traction Company? A. I was, with others, in control of such a railroad.

Q. And did you make application to the Public Service Commission for any official action by them? A. The Company did, yes.

Q. What was that action? A. Our first action was in connection with the franchise granted to the Company on or about May 20, I think, 1909. We applied for permission to exercise that franchise under the provisions of the Public Service Commissions Law. After a short time permission was refused on the ground that the inside of the franchise was not satisfactory to the learned member of the Public Service Commission; did not like its terms. On that matter, Mr. Willcox was Chairman.

Q. Will you give me the date? A. That was about June or July, 1910. I don't recall the exact date. On that matter Mr. Willcox was Chairman of the Commission. As I recall it, I knew he did not vote at the time. Thereafter, that was carried up to the Courts and the certiorari of the Courts disagreed with the Public Service Commission, and the permission to exercise the franchise was granted under an order, I think, of the Appellate Division of the Court of Appeals, I forget which it is now. Thereafter we proceeded to try to exercise that franchise and found it rather difficult. One of our troubles was the same Public Service Commission which didn't seem to like our proposed route for some reason or other — well, there was continual difficulty with the Public Service Commission. Down towards the end of 1910 the Public Service Commission developed sudden anxiety as to the stockholdings of the South Shore Traction Company and as to the distribution and issue of its securities, etc. At that time the Company was being bitterly attacked by another aggregation of patriots known as the Citizens Union which also seemed to be greatly disturbed about this little picayune railroad of eight or ten miles, and finally around the month of November or December, 1910, as I recall the date, I think I am pretty near right, was called there on several occasions to the office of the Commission, to see Mr. Maltbie and some one else — I think it was Eustis, perhaps, I am not sure now, about these stock issues which had become a subject of considerable interest, apparently. I had been negotiating then with the Guaranty Trust Company — I think the name of the President was Wimple, or something of that sort, about arranging a traffic agreement by which we could carry passengers for one five-cent fare on the Second Avenue Street Railroad and across Queensboro bridge, under which they were then

operating. Before I got very far the Guaranty Trust Company wished to know who the stockholders of the South Shore Traction Company were. About that same time the Columbia Trust Company, which had been the Registrar of the stock of the South Shore Traction Company, evidenced a desire to know who all the stockholders of the company were, regardless of whether the stock was registered or not. At the same time the Public Service Commission seemed to be afflicted with the same curiosity. There was no reason why they shouldn't know but I saw no reason why they should know, other than those of record and I so represented to members of the Commission that the stock books spoke for themselves and that was all that was necessary.

About this time I dropped in to see Mr. Willcox and discussed my troubles with him. Our relations had been friendly, I suppose not over cordial perhaps, I had hoped friendly, and he regretted that he could not go in to help me in my trouble but suggested that he had a friend, Emmet Queen, who was interested in some corporation in Pennsylvania where there was no Public Service Commission to bother the activities of a promoter or to limit profits, and that he wished I would do something for Emmet Queen if I could, he would send him down to see me.

A day or so afterwards Emmet Queen appeared with an application for a loan of \$50,000, with some securities—that is he called them securities. I took his application and sent it along to the Northern Bank of New York with which I was then connected as Chairman of the Executive Committee and asked for a few reports. I have the original reports here and the report upon it which seemed to show that Mr. Emmet Queen was more or less a man of straw and that the proper thing to do was to get Mr. Willcox's endorsement, as Mr. Willcox was endorsing for him elsewhere. I turned the papers over to Mr. Willcox with my regret that I could not accommodate his friend with the \$50,000. Immediately thereafter an order was issued by the Public Service Commission for the examination of the South Shore Traction Company, and that railroad traction construction company which had the construction contract for the South Shore Traction Company, and there was the beginning of the whiligig that wrecked the so-called "line of Robin corporations."

Q. Immediately? How soon? A. Within a day or so. You gentlemen will probably recall about this time there was much in the papers about alleged bribery of various public officials with regard to the issuance of this South Shore Traction Company franchise. As a matter of fact there wasn't any cause — I was not in the bribery business, might have been better, perhaps, if I had been. Of course the investigation showed there was nothing there, no bribery, no corruption, no fees, or secret stockholders or anything of that kind.

Senator Thompson.— Commitments? Obligations? A. There were neither commitments nor obligations. I got this franchise from the Tammany Hall City Government. There never was a suggestion of a dollar of bribe, purchase, consideration, attorneys' fee, of any kind whatsoever, direct, indirect, contingent or remote, from the City Government of this city under Tammany. The only suggestion there was of a bribe or the least demand, was from one of the gentlemen in the Bureau of Franchises, a man named Mr. Harry P. Nicolls, with whom I will deal hereafter.

Mr. Moss.— Have you come to a point where Mr. Willcox's interest ceases in this? A. That is all so far as Mr. Willcox is concerned.

Q. I draw the conclusion that the events you stated were stated without feeling and without malice. A. You asked me about these papers. I have stated the cold facts. I impute no motive to Mr. Willcox as unworthy. It is simply a cold statement of facts. What it means I don't begin to state.

Q. Are you willing to answer any questions Mr. Willcox may ask? A. I certainly will.

Mr. Willcox.— Perhaps you'd better get a statement from Mr. Robin — from my attorney. I knew Mr. Robin long before I was in the Commission. I had been introduced to him through friends of mine. I liked Mr. Robin and at his earnest solicitation I became a Trustee of his Savings Bank, the Washington Savings Bank. I looked upon Mr. Robin as one of the brightest and most progressive men in this town. a man that had great success in developing enterprises, financial and otherwise.

When I became Post Master, I think it was, feeling that my duties would be such that I would be entirely engrossed in them, I resigned from the bank. That was in a day of prosperity. I didn't resign from any cause except that I was going into other work that would take all my time and I continued to know Mr. Robin, whom I regarded as particularly resourceful, a man that I said this about to a good many men that if they wanted to get hold of a man that had unusual energy, enterprise, and that could put things over, Robin was the man, and that is what I believed and I never saw anything in Mr. Robin during my acquaintance with him when I saw him more or less every day at those times, that was not perfectly honorable. So, I knew him in that capacity.

When I was in the Commission the South Shore matter came up. My memory is hazy regarding that franchise. At that time it was a habit and custom in the Commission that the Chairman did not sit at any of the hearings. If there was a matter concerning a different franchise or application, it went before the City Commission and then every other Commissioner tried to familiarize himself with the decisions before it was taken up. I could not for the life of me now say whether the South Shore Traction Company franchise was one Mr. Robin obtained before he came into office or after, but I know the matter was up before our Board, and I remember two or three times Mr. Robin was down to see me and talked very earnestly about matters that were before us. I don't say now whether I voted upon his matter when it was before us or whether I didn't but I haven't any doubt — I have no clear recollection but I haven't any doubt — that if he was down in my office, knowing him as I did, a man that I have described to you, that I'd say to him, if he says I said to him, I was going to send a man to him, I would say that is right. And I might have said to him "Here is a man that has been trying to interest me in railroads and various other things, and I have no time for him." I don't think I ever said that I wanted anybody to act for me, because these corporations were in a state where there was no Public Service Commission but this man Queen was a man who was in a lot of things to try to interest me and I haven't any doubt that I may have said to Robin, "Now, here is a man that's got a lot of things; you're a hustler. Do you mind if I send him

down to you to take your matters up?" and I presume Mr. Robin said to me, "Send him along," and if I did send him along I did it in pursuance of such conversation.

Now, as far as asking for any loan, I had no interest in any loans of Mr. Queen. I had no business relation with him except I did endorse a note for \$35,000 I have had to pay, or obligated to pay, a part of that and I can tell you gentlemen, it took a good part of the earnings.

Senator Thompson.—Was this endorsement of the \$35,000 note after this application was made to Robin? A. The two things had no connection. The note was partly paid off, and then it was renewed, and I placed it around, and finally had to assume it myself and pay part of it myself.

Senator Thompson.—Were you on this note in November or December, 1909? Were you on the note before this or after this? A. I couldn't say. At the time I will say that I never believed in 1909 and 1911 that I would have to take that note up. A part of it was paid but I have had to pay part of it and part of it I am still carrying under my own obligations.

Mr. Moss.—Did you say, Mr. Robin, that this conversation occurred in 1910?

Mr. Robin.—Nineteen hundred and ten, I think. Late in November, 1910, as I recall.

Mr. Willcox.—Let me count for a minute and sift this down.

Mr. Robin.—I think I can help Mr. Willcox out. Here is one of the notes.

Mr. Willcox.—I have nothing to do with his notes. These are some papers that I sent you that he left with me about his various enterprises.

Mr. Robin.—Papers that I left with you?

Mr. Willcox.—The papers I sent to you in the fall of 1910. I was in Glen Cove in the summer of 1910. This way I am figuring. I had a summer house from May until November in 1910. It was then I became acquainted with Mr. Queen, who lived, as I say, in celibate fashion next door. Whether I signed

the note with him during those fall months or whether it was afterwards when he came into my office, I don't know.

Mr. Moss.— Don't you know what that note was to be used for?

Mr. Willcox.— It was purely an accommodation note.

Mr. Moss.— There was some business required.

Mr. Willcox.— No business with me.

Mr. Moss.— Didn't he explain?

Mr. Willcox.— He didn't tell me anything. He is a man that carried hundreds of thousands of dollars in paper. It was a foolish thing for me to endorse that paper but I endorsed it without consideration.

Mr. Moss.— Had you no business relations with him?

Mr. Willcox.— No business relations of any kind. He was a man that I liked. I knew Robin and I liked him, and he had these enterprises, and I said, "I will put you in touch with a man that knows all about the East" and "a good man for you to to go to," and I think I spoke to Robin about it and I think Robin afterwards told me after he looked into these papers that he had looked the thing up and there was nothing in it. I have no interest whatsoever — had no connection with Mr. Robin's franchise matter any more than the color of the Milky Way.

Senator Thompson — That is the reason why you signed the note before this memorandum of November 10th was written. It seems that this story is that he applied to the Northern Bank which he was interested in —

Mr. Robin.— I reported to the Northern Bank for an investigation.

Mr. Willcox.— This is what I think happened, if you will allow me to make this statement. Mr. Queen would try to get loans through him saying that I was his friend, and that I had gone on his paper, all of which is true but I did not say that I would endorse —

Senator Thompson.— "Mr. Young suggested yesterday if he wanted a loan he would give an endorsement. He said he thought

he ought not to do so, and the inference was that he had this endorsement in his trust company. I then insisted on his giving me the names of such endorsers as Queen might procure. He gave only one and suggested Mr. Willcox."

Mr. Willcox.— That would seem to indicate — and from what I know of Queen and the difficulties he has got into since, financially (I don't mean to say he is a bad man at all; I have a notion that he took advantage of this introduction I gave him to this man I thought would help him to promote enterprises. I regarded Mr. Robin as a very able promoter of enterprises of that kind. He started off at once to get a loan, but I don't remember putting it up to him in any such way as that. I felt Robin was a good man whom I would introduce to anybody that was interested in utilities or any other enterprises of that kind, the Pennsylvania or Ohio or California. I would have said, "Go and talk with Robin."

Mr. Moss.— Even though Mr. Robin had an application before your Board that was being contested?

Mr. Willcox.— I don't think I would have dreamed of the fact that this application that was before us for the South Shore Traction Company was a company matter which Mr. Robin might have been interested in. He did come down to talk with me about it but you must bear in mind I knew Mr. Robin pretty well and he knew what I think everybody in New York knows, the fact that I knew him and was friendly with him, would have had nothing to do with the way his matter was acted upon in the Public Service Commission. The two things have no more connection in my mind than the education of my child.

Mr. Shuster.— Mr. Robin, you didn't make a loan to Mr. Queen?

Mr. Robin.— No.

Mr. Willcox.— I never —

Mr. Robin.— I make no complaint. I am not here making any complaint whatsoever. I have been called here for the information which —

Mr. Willcox.— May I ask Mr. Robin a question? Mr. Robin,

you didn't understand my sending Mr. Queen to you to talk with you that I was interested in Mr. Queen?

Mr. Robin.—Until the course of events that followed this transaction came up, I thought you were the most honest man in the world. I thought there was not a thought in your head that was not absolutely the essence of honesty and straightforwardness, but when, within three or four days, or two days, to get the exact time, after I declined this loan and told you I wouldn't make this loan, the drastic order was issued of your Commissioner, which was followed by contemporaneous acts of others, I made up my mind that the price of that loan was the price of immunity in the Commission, but I make no complaint at all. I wouldn't say this but you asked me to question the record.

Mr. Willcox.—Did I request you to make a loan to Mr. Queen?

Mr. Robin.—You asked me, sir, to make this loan to Mr. Queen.

Mr. Willcox.—I want to say for testimony that that is absolutely false. I did say, and I think Mr. Robin told me afterwards, "Don't have anything to do with those things or let any of your friends. I have investigated." I am not sure but I wrote him a letter.

Mr. Robin.—Right. You will find the letter.

Mr. Willcox.—I had no interest in him. I simply said, "If you want to get a hustling man, you go and see Robin." If I had thought he would have asked for a loan—I had no interest in Mr. Queen at all.

Mr. Robin.—If Mr. Queen were across this table, I might face him with some information.

Mr. Willcox.—I cannot go bail for what Mr. Queen said.

Mr. Moss.—We want to know what Mr. Queen said.

Mr. Willcox.—Mr. Queen might have said—

Mr. Robin.—I don't like to go at things in this way because I think the events which happened between Mr. Willcox and myself make it pertinent at this stage, but with Queen absent I

have gone the limit, I think. I don't think it is fair to Mr. Willcox to ask what another man said in his absence.

Senator Thompson.— Do you consent to that, Mr. Willcox?

Mr. Willcox.— I don't think it is fair to talk of a man who is not here, and whom I have have since found, although I don't care to say anything against any man, I have since found Mr. Queen's statement cannot be relied on at all, and I don't think the statements of a man like that ought to be charged against him simply because I gave him a note of introduction to another man.

Mr. Moss.— It is to charge you, Mr. Willcox, I have no such thought of you, but I'd like to follow Mr. Queen.

Mr. Willcox.— I'll tell you — Mr. Robin feels evidently, of course he feels deeply about it, that there was a connection between his refusal of the loan to Queen and the action on the South Shore franchise. Now, the thought is I was not interested in any loan and I ought not to be responsible because I gave the note of introduction. After the situation I have described Mr. Queen may have gone there and said he was getting this money from me. I don't know what he might have said.

Mr. Moss.— Where is John Alvin Young? Did you find his name in those papers? Where is he?

Senator Lawson.— I don't know where he is. His name is on that paper. He was the president of the Windsor Trust Company at that time.

Mr. Moss.— Is he in New York?

Mr. Shuster.— Where is Queen?

Mr. Willcox.— I can't be held accountable for the wild statement of a man —

Senator Lawson.— Mr. Willcox, had you already endorsed this note of Mr. Queen's before this incident came up? A. I have just said I can't tell you definitely. The only thing I have got to go by is this: that I was in Glen Cove in the summer of 1910, where I met Mr. Queen, and he came to me, and I supposed him to be a millionaire — he was a very good liver — and, as I say,

he tried to get me interested in various enterprises, and I didn't want to go into any of them. I had no time to give to it and no money to invest in them. But I saw considerable of him before I left Glen Cove and afterwards, because he was my nearest neighbor, and whether I signed that note or endorsed that note for him in the fall I have no recollection of the date, I am only going back to the summer I was there, and my recollection is that I endorsed that note some time that autumn, but I couldn't tell when.

Senator Lawson.— That was 1910? A. 1910.

Senator Lawson.— If it was endorsed in the summer or fall of 1910 then that note would have been endorsed by you prior to this transaction. A. I don't know.

Mr. Moss.— This letter to Mr. Robin is dated December 19, 1910, and the report to Mr. Robin of the Northern Bank is dated November 30, 1910, so that if you gave the letter of introduction to Queen to Mr. Robin, it would have been subsequent to the endorsement of his note.

Mr. Willcox.— Of course, that goes without saying. If I had signed this note for him in November or December it would have been before I sent this note to Robin. I couldn't tell.

Senator Lawson.— By that act you were interested in Queen to the extent of \$30,000.

Mr. Willcox.— I had no question —

Senator Lawson.— This man Queen —

Mr. Willcox.— I had no more doubt about Mr. Queen's —

Senator Lawson.— I don't doubt that, Mr. Willcox; but you were interested to the extent of \$35,000.

Mr. Willcox.— If Mr. Queen had come to me in January or February or March and asked me to endorse the note, this \$35,000, I would have done it. It was my belief he was a rich man. I know that when I told him to go — he wanted me to introduce him to some people, and when Robin was in the office I said, "Here is a man that has some enterprises and I'll send him up," and Robin came back and said, "You'd better be careful about that man; I don't think he is worth anything."

Senator Lawson.—But you already were down on his paper.

Mr. Willcox.—Yes, and in a few instances —

Senator Lawson.—From my own curiosity as a member of this Commission, I was trying to ascertain in my own mind prior to the time that you gave this letter of introduction to Mr. Robin to Queen that, naturally, being on this man's paper for \$35,000, you were interested in him. I don't mean for anything mercenary.

Mr. Willcox.—I was interested in him to this extent, that he had these enterprises, which from his talk, and I believed him, seemed to be good things, and I knew Robin was a good fellow and a hustler before we got into this trouble —

Senator Lawson.—What I mean to convey is that this would be perfectly natural for you to give anybody whom you were interested in a letter of introduction, particularly when you were already on the man's papers, no difference whether it was Robin or somebody else.

Mr. Willcox.—The only exception I take to that is, I don't think that at any time my giving him a note of introduction — I thought this man had some valuable enterprises and I recall it, and I thought Robin was a hustler — I knew he put things over, and I thought as soon as I said to Robin, "I am going to send this man to you" —

Mr. Perley Morse.—You gave this endorsement and the letter of introduction as a friendly act?

Senator Lawson.—What has that got to do with it?

Senator Thompson.—That hasn't got anything to do with it at all. If I were to go to Mr. Willcox and ask Mr. Willcox for a letter of introduction and he said to me, "Why, Senator, I'd be glad to give it, but I am in a public position. I wouldn't want my position to be questioned;" but if Mr. Willcox was down on my paper for \$10,000 or \$30,000 he'd say, "Well, I think enough of you; I have already put my name on this paper; sure, I'd give you a letter of introduction." He wouldn't let that public office stand in the way.

Mr. Willcox.—I think I should have given Mr. Queen that

note of introduction to Mr. Robin; not only is it possible but I would have done it. Of course, I think writing letters back and forth may be questioned, I certainly believe the question of signing notes is a very bad policy, but so far as giving that note, I think I was pretty careful all the time I was in a political office. I did this as one friend to another, and when Robin told me that I'd better be careful of the deals I had with this man, I presume I took that as a friendly act.

Senator Lawson.—How do you account, Mr. Willcox, that right after this friendly tip that Mr. Robin gave you, immediately his troubles began?

Mr. Willcox.—Robin's trouble? I don't think Mr. Robin wants to give the idea, at least I should think it very strange if he gave the idea, that his trouble was by me.

Senator Lawson.—I can only put it on the grounds of how I, as a member of this Committee, receive this. That is the slant I take of it.

Mr. Willcox.—It seems the application which Mr. Robin was interested in was acted upon by the Commission in February. I couldn't tell you now what the action was. I know I had no details of it.

Senator Lawson.—It goes further than that. Mr. Robin says that two or three days subsequent to this action, refusing to make this loan, immediately thereafter the Public Service Commission demanded certain information in connection therewith. Other people —

Mr. Willcox.—That is predicated upon the fact that I gave a note of introduction to a man. Of course I gave the note of introduction and I assume that if a man that I introduced went and killed a man I would be responsible for it. I couldn't stand for that.

Senator Thompson.—The idea is right here. These are facts, but I want to use them by way of comparison. I got a letter from a constituent of mine, 23 or 24 years old, and I have known him ever since he was a boy, and he said in it that he could get a job with the Public Utility Corporation up there but they wanted me

to recommend him. Now, in the position I was in, suppose I had sent him that letter of recommendation and got that job. What position would I have been in?

Mr. Willcox.— I think the connection is too distant.

Senator Lawson.— You can see the way the public take that, can't you?

Mr. Willcox.— I don't think the public take this matter in any such way. You have got to take cognizance of the facts. Here was a man that Mr. Robin is, a man that I have nothing to say against his reputation now. I haven't followed his troubles. So far as my relations with Mr. Robin were concerned, he was a man that I had great faith in. Here is another man, my neighbor, a man of great wealth, as I supposed, wanted me to be interested in enterprises outside of the State and outside of my jurisdiction. Meeting this man, I say, "Here is a man with a lot of enterprises that I think you ought to get in with." I ought not to have said that but I did say it, and as a result of it I gave him a note to Mr. Robin. He looked up the record. Now, if you say and want to draw the conclusion that I gave this note to Mr. Robin because I had a loan, because I was on a note for \$30,000, of course you have a right to draw that conclusion; but I didn't do it for that purpose.

Senator Lawson.— I don't want to draw any such conclusion. I merely want to set forth from my slant and as you have figured, that might have interested him.

Mr. Willcox.— I never gave a thought to it. I know I have had to pay part of the note and will still have to pay part of the rest of it. I have no interest in anything Mr. Queen was ever interested in. I have not had so much as a five-cent piece from a professional or any other way.

Mr. Moss.— Did Mr. Queen ever give you an explanation of what he did with that \$35,000?

Mr. Willcox.— I found out afterwards. I met him six months ago on the street and he tried to pass by without seeing me, but he says, "I am going to pay you back with interest." I said,

"Queen, there is no man in this country that has ever done me like this." He said, "I have saved up a few thousand dollars; I am going to pay it back." And he believes he is. He is a dreamer. These judgments show that, and I doubt not that he was owing at that time a large amount of money. I have never looked it up.

Senator Thompson.—It looks to me as though he was the original Wallingford.

Mr. Moss.—I'd like to know how he got into Gardiner M. Lane.

Mr. Willcox.—I should feel very sorry indeed if any man in this country should think that I was trying to get a loan for a man because of my letter of introduction.

Senator Lawson.—You never investigated Mr. Queen before, did you?

Mr. Willcox.—I met him at Glen Cove.

Senator Thompson.—There was one other thing that I want to clear up, if there was anything to it. Something about your being receiver for some real estate company.

Mr. Willcox.—The Interborough. Has nothing to do with the Interborough Railroad. I was appointed since I have been out of the Commission.

Senator Thompson.—Since you came out of the Commission? I don't care anything about it.

Mr. Willcox.—I have never, as receiver or trustee, been interested directly or indirectly in the purchase of any property or assets belonging to the party or corporation of which I was receiver or trustee.

Senator Thompson.—That settles it. This session will remain executive.

Mr. Willcox.—It might be well to state this: that because Mr. Shuster has brought it out, I never had any doubt about Mr. Queen's ability to take care of this matter because this note was carried along for a good many months. In fact, there was, in the

summer, I think, of 1911, quite a large payment made upon it, reducing it to somewhere in the neighborhood of \$20,000. I didn't realize for more than a year, I should say, or, perhaps, a year and a half, that Queen was having trouble. I never made any inquiries. I saw him from time to time and he gave me plausible excuses for carrying this paper. I didn't think I would have to take care of this paper for a year or a year and a half.

Mr. Shuster.—And the transactions you were engaged in with Queen and Mr. Robin were very shortly after you endorsed the paper?

Mr. Willcox.—I want to say that I didn't give this man a letter for the purpose of a loan. If he violated my—I wouldn't send the man to anybody for a loan.

Mr. Moss.—You didn't think he would pay your loan?

Senator Lawson.—What has become of this man Queen?

Mr. Willcox.—I have not seen him—

Senator Lawson.—Is he still in business? Still promoting companies?

Mr. Willcox.—When I met him six months ago he said he was in things in the west and Texas, and said, "I am going to have millions of dollars. You will never lose anything from that indebtedness of mine." He has told me that now for two or three years.

Senator Lawson.—He is going to come back, isn't he?

Senator Thompson.—Now, I want everybody here to understand that this session up to here remains executive. You can take Mr. Robin outside and go on with Mr. Queen's matter, and I have said to Mr. Willcox, who said he really would like to get an opportunity to get his facts and figures—

Mr. Moss.—That is right. I have promised him to take it up in the morning.

Mr. Willcox.—I don't want it to appear that I am trying to seek any favor.

Mr. Robin.—I want to say, Mr. Willcox, so far as I am concerned there will not be a word about this to a soul. I am not here because I want to be. I have no feeling towards you. I felt prouder of you when you turned me down in that franchise, because I felt you were acting in accordance with what you thought was proper, and until this event occurred, and the succession of events that have happened, I'd have put every dollar I had in the world, and I had about three millions, in your care and would be sure I got back the three million dollars in the same bills.

Mr. Moss.—We have had this passage between these two gentlemen and I would like to have Mr. Robin declare his honest opinion. Would he be willing to state as his honest opinion of this transaction now, after having listened to Mr. Willcox and having been questioned—

Mr. Robin.—I simply say this. I guess it is no secret any longer that while W. H. Hotchkiss was working for the interests of the Dock Company the Morgan interest gave him a job. Marvin Scudder was the creature of one John Purroy Mitchel. At the time that Purroy Mitchel was pulling off his little jobs as president of the board of aldermen, and there was a curious thing that John Purroy Mitchel, who had been holding us up in Queensboro, should appear, through the Public Service Commission, in the person of Marvin Scudder, at my office to raise merry blazes with the whole outfit, which he did. He certainly did, and you were all there. All about the marvelous graft which didn't exist. Immediately following my turning down this proposed loan of \$50,000.

I put it to you, Mr. Willcox, you reversed the positions and put yourself in my place and put me in your place forgetting my jail record for the moment, and if you would not say that Robin was a dirty crook who had tried to hold me up for \$50,000 when I couldn't pay up, you'd be of a cast of mind that I think would authorize you to enter into the land of cherubim.

Mr. Willcox.—Today is the first day I ever knew that Queen went to you for a loan.

Mr. Robin.—Don't say that, because I came to you and told you about it. I wrote you a letter about it.

Mr. Willcox.— You came to me and told me I'd better beware.

Mr. Robin.— I can give you that letter that I wrote you. I told you he was a man of straw, and I wouldn't have a damn thing to do with him. Then came the cataclysm and it came hot. I was forced to one conclusion, which any reasonable man must have when you take an association of events of so immediate and intimate a nature, that it pointed, to my mind, to just one thing. That I hadn't come across and I was getting handed the goods. As for Mr. Mitchel, I will attend to his case when I get to his history in Queensboro, because I happen to know it.

Senator Thompson swears MR. WALTER E. SACHS, and he testified as follows:

Mr. Moss.— Have you had any transactions with Mr. Prendergast? A. Not personally.

Q. Did they relate with any investment of "Paris funds"? A. I don't know what you mean by "The investment of 'Paris funds'".

Q. That is as near as I can express it. A. I don't recall.

Q. What were the transactions? A. As far as I remember it was the buying of short term city obligations — revenue bonds. Not necessarily long term bonds but what we call revenue bills, short term city obligations for six months.

Q. Have you had any dealings with him as Comptroller? A. Occasionally, with him or Mr. Fisher.

Q. As Comptroller? A. Mr. Fisher as Deputy-Comptroller.

Q. Did you ever have any transactions with him personally? A. No, I should say not.

Q. Did he have any financial transactions with your house, not representative of the city? A. Not that I know of. I couldn't say positively.

Senator Thompson.— Did you handle the city refunding — As I understand they refunded a large loan for one hundred million dollars that was owned abroad a couple of years ago, at the time the war broke out. A. As far as I know he had nothing to do with it.

Senator Thompson.— I understand the loan abroad was paid

and the money was raised here. A. We had nothing to do with any transactions abroad when the war broke out.

Senator Thompson.—I assume that in your position you are unable to give the transactions he might have had in the absence of your broker? Will you be willing to show your books and advise us what you find there? A. Yes.

Mr. Moss.—As I understand it, we are not interested in the transactions he had with Mr. Prendergast. This question has reference to transactions in which he was interested only in a personal way. A. I must make myself clear that as far as my memory goes I know of only transactions connected with the City of New York. I simply say I don't remember any others.

Mr. Moss.—And it would appear that the funds which such sort of information has reached us, termed "Paris funds" (I don't know what that name means) if you will look in your books and see if there is anything of that kind and communicate with me at my office, it will be considered private.

Senator Thompson.—We don't care to have the city transactions. Of course they are matters outside of our interests. Just personal transactions. You know the character of those that we might want to inquire about. A. I am pretty sure there is absolutely nothing of that kind.

Senator Thompson.—You take that up and communicate with us.

We will now adjourn into public session.

Adjournment into public session.

AN EXTENSION OF THE EXECUTIVE SESSION OF JUNE 30, 1916.

Mr. Moss.—I have had made an examination of the judgment in the county clerk's office in New York county, and these judgments have been found against Emmet Queen:

1. Jan. 27, 1911, \$25,015 by the Audubon Bank, Chas. W. Ridgeway, Attorney.

2. Feb. 27, 1911, \$10,342.34 by Lucius W. Wilson, Howland Murray & P., Attorneys.

3. Mar. 3, 1911, \$13,312.29 by the partners of Lee, Higginson & Co., (including Gardiner M. Lane) Strong & Cadwallader, Attorneys.

4. April 26, 1911, \$12,358.79 by Edgar I. Ahrweiler, Jerome Wilzin, Attorney.

5. April 8, 1912, \$210.50 by James H. Noe.

6. April 8, 1912, \$100.62 by James Martin.

7. April 8, 1912, \$175.34 by James McCreery & Co.

8. April 8, 1912, \$198.41 by Emily T. Valentine.

(Last four judgments taken by Charles T. McCarthy, Attorney.)

9. April 10, 1912, \$1,292.34 by the Art Society of Pittsburgh, Heywood & Covington, Attorneys.

10. July 1, 1912, \$355.79 by Jacques Krakauer, Jacob Miller, Attorney.

11. July 11, 1912, \$377.18 by The Auto Supply Company, Stern, Barr & Tyler, Attorneys.

12. July 11, 1912, \$538.03 by John Lavine, (same attorneys).

13. July 20, 1912, \$173.08 by The Mineola Co., Bernard S. Krause, Attorney.

14. Feb. 1, 1913, \$1,659.81 by First National Bank of New Bethelhelem, Pinkus & Steckler, Attorneys.

15. April 1, 1913, \$2,537.96 by Friend M. Aiken, Henry Smith, Attorney.

16. April 23, 1913, \$281.86 by Duquesne Hotel, Henry Wooz, Attorney.

17. April 24, 1913, \$7,969.72 by Assets Realization Co., K. R. McKenzie, Attorney.

18. April 28, 1913, \$4,342.22 by Theodore Hoffstetter et al, M. M. & Carr, Attorneys.

19. June 24, 1913, \$565.50 by Mary E. Lust, Abr. Weilar, Attorney.

20. Sept. 24, 1913, \$1,941.29 by William F. Dodge, Chas. E. Rice, Jr., Attorney.

21. June 25, 1914, \$6,359.05 by Renault Freres, Comdert Bros., Attorneys.

22. June 26, 1914, \$2,024.26 by William F. Dodge, Chas. E. Rice, Jr., Attorney.

23. Oct. 27, 1914, \$250 by E. F. Thompson, Hornblower, M. & P., Attorneys.

24. Nov. 11, 1914, \$15,753.09 by Frank M. Dunbaugh, Studin & Studin, Attorneys.

25. Nov. 21, 1914, \$26,760.95 by Helen F. Garey, Hochmeier & Co., Attorneys.

26. Nov. 25, 1914, \$34,377.85 by Union Trust Co. of Pittsburgh, Thatcher & Bartlett, Attorneys.

27. Nov. 25, \$2,497.45 by Lancaster Sea Beach Improvement Co., H. G. Pierce, Attorney.

28. June 6, 1915, \$90,071.28 by Charles F. Heidrick, A. M. Schwarz, Attorney.

29. Sept. 27, 1915, \$1,381.76 by Edward L. Patterson as Trustee of the Holland House, Huntington, R. & S., Attorneys.

30. Dec. 11, 1915, \$461.24 by Samuel Stern, A. M. Swarz, Attorney.

An examination of the judgment roll in the Lee Higginson case shows that L. A. Osborne was sued with Emmet Queen; that the defendant Queen appeared by John P. Everett as attorney and the defendant Osborne by Hunt, Hill & Betts. There were two causes of action: the first on a note of \$44,400 dated August 18, 1910, with collateral of 1,000 shares of common stock of the Citizens Light, Heat & Power Company, operating in Johnstown, Pa. The note was signed by both defendants. The second cause of action recites an agreement between the defendants and Lee Higginson & Company, recites the transaction and the agreement to make the loan, on certain representations by the defendant, including these: The said company is capitalized: bonds \$1,500,000, preferred stock, \$105,700 (issued), common stock, \$2,000,000 and no debts. Lee Higginson & Co. will make the loan provided Queen is able to secure extension of loans of \$460,000 now secured by shares of stock in said company. Queen desires to obtain loan in 30 days of \$506,000 secured by 11,000 shares of said stock; and many other matters. The judgment is for an unpaid balance.

JUNE 30, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

MORNING SESSION.

Meeting called to order at 11:30, Senator Thompson in the Chair.

Mr. MARSH is sworn by Senator Thompson and testifies as follows:

Senator Thompson.—What is your name? A. Benjamin C. Marsh.

Mr. Moss.—Mr. Marsh, I have asked you to come here to give us some information about this New York Central improvement, as some people call it, and I particularly want you to tell us about the real estate end of it. In your own way, give us that which you think will illuminate the record. A. Well, the League for Municipal Ownership and Operation in New York City, of which Bridge Commissioner Howe was president, made an investigation of the activities of the New York Central Railroad Company and the corporation for which it was acting. We found that the New York Central (and we have here the official records from the registrar's office) has acquired, during a period of about a year, some forty-one parcels of real estate on the west side of Washington street, chiefly between Gansevoort and Spring streets and on the cross streets west of Tenth avenue from 30th street to 191st. This was up to about the first of June. Since then they have acquired more property. The assessed value of these properties of forty-one parcels was, in 1915, \$846,000. Buildings were assessed for \$217,000 and the land for \$629,000.

Q. This improvement, then, has been going on for years? A. This map, if you will allow me to put it in evidence (I'd rather not file it; I will leave it for examination, I would like to have it returned), gives an indication of how they have been attempting to dominate the whole of the waterfront.

Mr. Moss.—The witness shows a long, several-sheet drawing, indicating properties bought on various blocks in a long line, north and south, from Gansevoort street to Spring street, and from

30th street to 19th, chiefly, and certified to by the registrar of New York County, official document. A. Now, we will find out whether there is an inter-locking directorate. I personally consulted the Directory of Directors and I found that the New York Central directors are: President, Alfred H. Smith; secretary, Dwight W. Pardee; treasurer, Edward L. Rossiter; capital, \$44,000,000. The officers of the New York State Realty and Terminal Company — I put down Alfred H. Smith, treasurer, it must be president, because Rossiter is given as treasurer, capital, \$5,100,000. I have here, also, a letter signed by Francis X. Disney, secretary of the Public Service Commission of the Second District, giving eight non-carrier companies affiliated with the New York Central Railroad Company. Can I read them?

Q. Yes, I'd like to have you read them. A. Clearfield Bituminous Coal Corporation, Fair Land Realty Company, Jefferson Coal Company, Merchants Despatch Transportation Company, Mohawk Valley Company, Mutual Terminal Company of Buffalo, New York State Realty and Terminal Company, Pennsylvania Coal and Coke Corporation. That was interesting so I wrote for the rest of them and got, in June — June 19th — the following list, abstracted from list of investments in securities of affiliated carriers in the annual report of the New York Central Railroad Company to the Public Service Commission, Second District, State of New York, for the year ended June 30, 1915. Now, as I recall, there are forty-four or forty-five companies. Shall I read the whole list?

Q. Yes. A. Genesee Falls Railroad Company, Battle Creek & Sturgis Railway Company, Beech Creek Extension Railroad Company, Beech Creek Railroad Company, Boston Terminal Company, Central Dock & Terminal Railway Company, Cherry Tree & Dixon Railroad Company, Chester & Becket Railroad Company, Cornwall Bridge Company, Chicago, Kal. & Saginaw Railway Company, Cleveland, Cin., C. & St. L. Railway Company, Detroit Terminal Railroad Company, Detroit, Toledo & Milwaukee Railroad Company, Dolgeville & Salisbury Railway Company, Fairport & Phalanx Railroad Company, Hudson River Br. Company at Albany, Hudson River Conn. Railroad Corporation, Indiana Har. Belt Railroad Company, Lake Erie, Alliance

& W. Railroad Company, Lake Erie & Pittsburgh Railroad Company, New York & Harlem Railroad Company, New York & Ottawa Bridge Company, New York State Railways, New York, Chicago & St. Louis Railway Company, Ottawa & New York Railway Company, Pittsfield & North Adams Railroad Company, Pittsburgh & Lake Erie Railroad Company, Pittsburgh, McK. & My. Railroad Company, St. Lawrence & Adirondack Railway Company, Toledo & Ohio Central Railway Company, Toronto, Hamilton & Buffalo Railway Company, Troy Union Railroad Company, Western Transit Company, West Shore Railroad Company, Toledo Terminal Railroad Company, Danville & Ind. Har. Railroad Company, New York & Fort Lee Railroad Company, Lake Erie & Western Railroad Company, Lansing Transit Railway Company, Mahoning Coal Railroad Company, Michigan Central Railroad Company, New Jersey Junction Railroad Company. So that the New York Central is apparently attempting to do what has been done in every large city, practically, on the seashore on the water front in the United States. A few years ago I had maps prepared by the engineers of Jersey City, Chicago, Cleveland and a number of other cities showing the fact that the water front is monopolized, and Mr. Baker, then mayor of Cleveland, now Secretary of War, protested and got recovery.

May I read into the record, Mr. Chairman, the way in which the New York Central defeated the will of the people to get its extensions by franchise? I got the facts from Mr. Delos F. Wilcox's book on "Municipal Franchises," vol. II, page 615. "In 1874 a constitutional amendment was adopted effective January 1, 1875, prohibiting the Legislature from passing any law authorizing the use of public streets for local purposes without the consent of the property owners or in lieu thereof the consent of the general term of the Supreme Court. On December 28, 1874, fifteen years before its charter would expire and four days before the constitutional amendment became effective, the New York & Harlem Railroad Company filed a certificate in the office of the Secretary of State extending its own corporate life and franchises for 500 years, April 16, 1889, page 2389."

In other words, the New York Central absolutely defeated the purpose of this constitutional amendment by a sleight-of-hand

trick and got a 500-year additional franchise. It seems to be perfectly evident from the way in which these lots are scattered, as an examination of this map will show, that it is the purpose of the New York Central not only to get a right of way down through the city on the west side — Mr. Chairman, may I ask for instructions? I am giving my impressions, not my own knowledge.

Q. That is your opinion from the facts that you have got? A. My opinion from the facts which I get from this map, that they want to control the entire industrial development of the Hudson river shore in Manhattan as far north as possible. If they get this they will of course make huge profits. W. C. Ripley of Harvard, in his book on "Railroad Rates and Regulations," points out that the Illinois Central paid \$200,000 for land about 1846 which in 1910 or thereabouts was worth \$34,000,000, an increase of sixteenfold, and the New York Central is apparently trying to leave the way open for itself to make terrific gain in the land values acquired, to control industrial development of the west side and absolutely monopolize, completely monopolize, the carrying of the west side. As the letter signed by Mr. Howe, Mr. Frederick J. Howe and John H. Hopper of this city, Municipal Ownership Corporation, indicates, they are apparently trying to dictate to the city administration, virtually (I am not giving the exact phraseology) to intimidate the city administration to give them this franchise under the threat that otherwise they will not run cars into New Jersey.

Q. According to your idea the legislation requiring them to remove the tracks from Seventh avenue is likely to become a blessing in disguise to the railroad? A. It seems to us, and I am subpoenaed and speak for myself, but giving the opinion of the others as accurately as I can, that the New York Central will find it best to use Eleventh avenue, probably put an elevated in there, but it will be very handy to have everything sewed up. Because, as pointed out, the railroads have got to have not only the right of way for their elevated line or whatever line they use for their cars, they have got to have freight yards and storage places, and it seems to be now the most cleverly devised hold-up plan that has been put over — attempted to be put over — in New York

City. I could go on in much more detail giving my impression, but I don't know that it is worth while. Those are the facts which I have, and our conclusion is, if I may state —

Q. Don't hesitate to give your opinion; if you do so simply state it to be your opinion. A. I'd like to quote from the letters written by Mr. Howe and Mr. John J. Hopper. "There can be no excuse for granting the franchise to the New York Central Railroad Company. The city authorities must deal with the corporation as a creature of the law, making a franchise granting authority of the State, and not as a dictator of municipal policies and the controlling factor in carrying food supplies and other necessities of a large portion of the large city's population. The fundamental principle should be that the city must own and control absolutely the belt line, or the other lines which run into New York City, and thereby insure equal treatment to every one of the railroads which have termini here, or which will seek in the future to have termini here." This contract was absolutely without foundation and justice, and particularly so as the New York Central by a most contemptible legal technicality evaded the obvious purpose of this constitutional amendment of 1874 and got a franchise of 500 years so it could use it to tell the city authorities to go to the devil.

They got the franchise and of course our Legislature takes the position which all intelligent non-corporation-controlled people are taking, that the perpetual franchises are an utter anomaly in this country and that they must be terminated, so that the city can plan itself and not be planned by a railroad or have to succumb to the greed of a railroad like the New York Central, with its capitalization of four hundred million and its affiliated companies totaling fifty-five or sixty.

Q. Did you ever notice the conveyance by which the New York Central got its right of way? I don't know but it claims fee along the Hudson river to Albany. A. I have seen the record of it, but it has slipped my memory.

Q. I was informed by some one that they paid fifty thousand dollars for it. A. I can't say. I know it was a very shady way in which they got it, but I would rather not refer to you information I haven't got in black and white.

Q. It is a tremendously valuable grant, takes the river front the length of the Hudson river practically. Now, Mr. Marsh, I notice in the newspaper this morning, I will quote from the Tribune of this morning. Article is headed "Chamber—" (meaning Chamber of Commerce) "—favors the west side plan and may make a profit-improvement contract in special meeting to-night." It says: "If the members accept a report of the committee on harbor and shipping the Chamber of Commerce in special meeting to-night will approve the proposed contract between the city and the New York Central Railroad for the elimination of the west side surface tracks. Although minor differences of opinion over details may exist, the committee agree that the Board of Estimate and Apportionment deserves praise instead of criticism for its work." Then there are given a few extracts from that report, and the article closes with this sentence: "The report is signed by Irving T. Bush, chairman; Lawrence B. Stoddart, Lloyd B. Sanderson, Albert Strauss and Clarence H. Kelly." Now, Mr. Marsh, from your knowledge of affairs about the town, does it seem to you serious or ridiculous that a report upon this subject should be presented by Mr. Bush? A. Well, Mr. Chairman, I know Mr. Bush and Mr. Kelly personally. They are both able business men.

Q. No question about that. A. They are both, personally, completely honest, but they have of course their own business to attend to. Now, some years ago Mr. Irving Bush, whose ability and honesty I want to express appreciation of, told me that we couldn't in any American city have both the city and private companies developing the water front at once; that it would have to be done either by the one or the other.

Q. It's just like the subway. If a private company gets into partnership with the city, the city is the weaker and less fortunate partner. A. I never blame any private interest for trying to get all they can. I blame the public officials who do not defend the rights of the public. They are the ones we have got to hold for the strict responsibility.

Q. The point of the matter here is personal interest. Mr. Bush is connected with the Bush Terminal right in this Brooklyn water front proposition, which in many respects we have learned by

testimony yesterday is similar to the Hudson river matter, and proved it by reference to the laws of 1911, two chapters in that book adopted on the same day, one of which applies to the New York Central improvement and the other to the Brooklyn water front improvement. A. I examined some years ago, and then again a year ago, quite carefully the situation of the South Brooklyn Improvement Company. I think the city was simply sacrificed in that South Brooklyn development to the greed of a few individuals.

Q. Mr. Bush was interested in a large business way down there? A. Absolutely, and Mr. Bush was entitled to be protected in his legitimate investment, but he was not entitled to have the city development postponed until he could sell his development to the city, which I understand (speaking from impression and not from knowledge he wanted to do. In other words, you have here, and I regret so much that I haven't the verdict of all the important harbor commissioners of Chicago and others opposing precisely this plan of the New York Central — I will have copies sent to you and they can be put into the record —

Q. We will make use of any material you may send us. A. They are absolutely alike upon their conclusion, which is this: That all terminal facilities in a city must be correlated, unified and absolutely owned or directly controlled by the city administration. When you don't have that you are going to have stub ends such as the New York Central in this city, although of course its tunnel modifies that a little. The only thing that will insure uniform and fair treatment to the railroads is that the city shall have control of the lines and operate them if necessary — insure equal treatment to all the railroads running into the city.

Q. Have you observed whether the responsibility for these matters which you have discussed rests upon any particular city official? If so, state who. A. As a matter of law, I frankly don't know. My recollection of the law, Mr. Counsel, is this —

Q. I not only ask you as a lawyer but as an observer of various proceedings. A. It's nobody's business as an observer, as it seems to be absolutely confliction of authority. The logical situation requires that the Public Service Commission should have something to say about it.

Q. That is cut out by the law? A. Yes, or our whole situation is so illogical there, two competing authorities, the Public Service Commission and the Board of Estimate and Apportionment. There seems to me to be a vast conflict of authority. It seems to me that every one of these big corporations, the New York Dock Company, the Bush Terminal, the New York Central, is trying to prevent the city of New York from improving it until they can get just what they want. As soon as the New York Central buys up this land, just as ex-Senator Reynolds and others have bought up land, they are going to be in a fine position to bleed the city again.

Q. They bought that land for a profit, of course? A. Not only for a profit but a blackjack so they could compel the city of New York to accede to their plan.

Q. They must have had some assurances, to put their money in, that the city of New York was going to enter. A line of purchases running absolutely in line and dominating the situation, and calling for the expenditure of a good deal of money would hardly be attempted by substantial business men unless they had some sort of an assurance that the scheme was going through. A. Another point. This map shows only the property acquired by the New York Central since June 1, 1915, through its dummy, the New York State Realty and Terminal Company. There is a great deal more. I hope within a month to have a map prepared showing all the land owned by the New York Central and all these companies in different colors.

Q. You have shown an interlocking directorate which, upon its face, is convincing that these high-toned directors of the New York Central Railroad Company have been doing just what some local politicians have been accused of doing in the past — buying up for personal advantage along the line of improvement concerning which they have had a tip from some one speaking for the authorities. A. That's just about —

Q. And they stand to make a fortune on it.

A. — what Chauncey Depew did up in Buffalo. He owned all the land there, so they made him chairman of the executive committee.

Q. Is that the Depew Land Company? A. I think that is the name of it. It looks to me as though it is about the same thing.

Q. Do you know who is secretary of that company now? A. I do not.

Q. Is it the same company of which Mr. Prendergast is secretary? A. I don't know and I wouldn't want to express an opinion —

Q. All right. I think that is all, Mr. Marsh.

Mr. Marsh leaves the stand, which is taken by Mr. WALTER WELLMAN, who being duly sworn, testifies as follows:

By Mr. Moss:

Q. What is your occupation? A. My occupation has for many years been that of a journalist. For the last five years I have been specializing in some engineering matters with the Interborough Rapid Transit Company.

Q. Did you submit a plan to increase the rush-hour capacity of subways and minimize the discomfort and congestion? A. Yes, sir.

Q. What was the plan? A. I believe every one knows, of course, that one of the great problems in rapid transit is the lack of capacity in cars and seats at the rush hours. This was a simple plan to enlarge rush-hour capacity by 40, 50 or even 60 per cent, according to the determination of engineers concerning any particular situation by a means simple and effective and without more than a very trifling addition to the original construction cost.

Q. Will you give us in a few words an outline of that plan? A. It was a mere enlargement of the well-known principle in transportation that the longer the trains run on a signal track the greater the number of cars you may get over the line in a given interval of time. For instance, in the original subway the provision was made only for eight-car express trains. Within two years after it was put in operation it was found necessary to increase the number of cars to ten, thereby increasing the capacity something like 18 or 19 per cent.

Q. Didn't that mean the lengthening of the stations? A. The platforms for the accommodation of unloading and loading. It was found that these eight-car trains' one weakness, especially at the hours of lighter traffic, is that there is congestion in the middle cars of the trains, while the end cars are very nearly empty.

Q. I always wait for the end car. A. The plan I submitted, which was very simple, was simply to combine two things, longer trains with multiple entrances and exits scattered along the stations from one end to the other, place the exits and the entrances in accordance therewith for the best results.

Q. Had that plan been endorsed by any city organization? A. It was presented to the Commission by the City Club of New York in the spring of 1911 and was urged — endorsed and urged — by the City Club, by the Merchants' Association, the Citizens' Union, the Allied Real Estate Interests and other civic organizations.

Q. And had engineers given opinions in favor of the plan? A. A number of well-known engineers found the plan entirely practicable and simple, found that it involved very little additional cost of construction and produced very great advantages not only to the traveling public by increasing the standard of comfort, but to the taxpayers by increasing the capacity of the lines and making it unnecessary to construct additional lines for the simple purpose of taking up the overload in the rush hours.

Q. When was that plan presented? A. In the spring of 1911.

Q. Was it applicable to the old subways as well as the new subways contemplated? A. Yes. If the Public Service Commission had so ordered it would have been applied to the existing subways to the extent of 35, 40 or 45 per cent within a year's time and without the cost of a penny to the city of New York.

Q. Will you mention some of the engineers that expressed themselves in favor of it? A. Well, some that occur to my mind at this moment were Mr. Connette, who was then the transportation engineer of the Public Service Commission. Mr. Connette told me that he and Mr. Turner, an assistant engineer for the Commission then and now —

Q. Practically the engineer — A. I think so. Both favored the plan, for they thought it a good thing and advised me that they would do everything in their power to help it along.

Q. Did any one advise you to talk with Chief Engineer Craven about it? A. Mr. Connette told me one day perhaps I'd better talk to Mr. Craven.

Q. Did you do so? A. I did so.

Q. Give us the interview you had with him. A. Mr. Craven said, "This plan of yours has great merit. Without doubt with it we could increase the capacity of the line in the number of cars and seats that we get over it in a given time. But see here," and he placed his hand upon a pile of blueprint drawings which had been made for the original Triborough route, and he said, "if we adopt this plan of yours we might just as well take all that and throw it away." I pointed out to Mr. Craven that it was true that if the plan of longer trains and longer stations was adopted for the new subway that some modification of these old drawings and blue prints would be necessary, but that that was a very small task in view of the great advantage to be gained, and I said to him, "Mr. Craven, in compensation for the very small trouble that would be caused you and your staff in changing these drawings in some details you would have the satisfaction of knowing that for generations to come hundreds of thousands of working girls and women, many of them compelled to stand all day at their employment, would be saved standing all the way to their work in the morning and all the way on their homeward journey in the evening."

Q. What did he say to that? A. Mr. Craven's reply was, "Does it make any difference if they do stand?"

Q. I suppose that ended it? A. An engineer of the Public Service Commission who could hold and express such a view evidently was not favorable to any plan to carry out a project for increasing temporarily and permanently the standard of public comfort in transportation in this city.

Q. Your testimony fits in with other testimony we have received. We are very glad to have you come.

Mr. Wellman leaves the stand, which is taken by Mr. MORTIMER, who, being duly sworn, testified as follows:

By Mr. Moss:

Q. Mr. Mortimer, I want to ask you about the lease that was made to the Public Service Commission in the Equitable building. You had some knowledge of the negotiations for that lease, didn't you? A. I did.

Q. Did you conduct the negotiations? A. Not entirely. Except at the closing.

Q. Do you know how the negotiations began, who made the proposition and who received the proposition, substantially what was said and done? A. No, I don't, Mr. Moss. My connection with the Equitable building began on the 15th of January. These negotiations, as I recall, were started before that time.

Q. With whom? A. Between the commissioners and our renting force in the building. My connection began at the tail end of the negotiations.

Q. With whom did you discuss any details? A. With Mr. Hodge, Mr. Hayward and Mr. Strauss.

Q. Which of those three gentlemen took the leading part? A. Why, it was pretty evenly divided up. Probably Mr. Hodge handled the details a little bit more than either of the others, though the final decision was made, so far as we were concerned, with the three gentlemen sitting together. The final matter was put up to Commissioner Strauss.

Q. Did you see Mr. Whitney in connection with it? A. Mr. Whitney came down to the building once or twice with one of the other commissioners, or maybe two of them, and looked over the space — once at least when I was present, and Mr. Whitney, as far as I was concerned, had very little to do with it.

Q. Do you know why they couldn't get the space in the City Investment building? A. I don't think there was that amount of space there.

Q. Did you have any conversation with Mr. Dupont regarding this lease? A. No, no more than once or twice I told him that we were negotiating with them.

Q. At the time this lease was negotiated you had a great deal of vacant space in the building, didn't you? A. We did.

Q. Do you know whether or not the building had failed to pay the interest on its mortgage because the building was not rented? A. It had not failed.

Q. Was it overdue? A. So far as I know, not.

Q. Wasn't there an extension of time given for the payment of interest? A. There was an extension at the time.

Q. When? A. You are getting into something that I haven't any knowledge of.

Q. What I have reference to — A. So far as I know, Mr. Moss, the Building Company has always lived up to its obliga-

tions with everybody, including the Equitable Life Insurance Society and everybody else.

Q. What is the amount of the mortgage? A. \$20,500,000.

O. What is the rate of interest per cent? A. Practically four per cent.

Q. Do you remember when it was that the interest was overdue? A. I don't know that it was ever overdue except under an arrangement which was entered into at the time the mortgage —

Senator Thompson.—An automatic extension in the mortgage?

By Mr. Moss:

Q. Do you know what percentage of the building was occupied when the Public Service Commission went in? A. When they went in, or when they made the lease?

Q. Take it when they made the lease. A. Oh, I wouldn't dare to say exactly. If you want to know how much is occupied now or how much was occupied the 1st of May it is about 80 per cent. Their lease began May 1st.

Senator Thompson.—Do you know how much the building cost?

A. No.

Mr. Moss.—Will you kindly swear Mr. Hadley?

Mr. HADLEY is sworn by Senator Thompson and testified as follows:

By Mr. Moss:

Q. Mr. Hadley, you produced the report of the examination of the Equitable Insurance Association. Is there anything in this report referring to the non-payment or deferred payment of mortgage interest? A. It's been a year since I have examined the report. I think there is, but I wouldn't be positive about it.

Q. Just look at this. (Hands him copy of report.) A. I don't think it is mentioned.

Q. I have been told that it is mentioned in your report and that is the reason I had you come up here. A. It may be that it is there.

Q. This is not your original report? A. Of course by making a thorough examination I might find it.

Q. Those are investments? Of course that would be under investments? A. If it came in it would come in there.

Q. Mr. Mortimer, while I am looking at this you want to make a statement concerning the advantage of this lease to the Public Service Commission. You may be doing that while I am going over this report.

Mr. Mortimer.—During one of the early interviews that we had with Mr. Strauss and Mr. Hodge in connection with this matter, we had in our offer of rental to them made them the lowest possible figure we could, giving them the usual ten per cent reduction which we give to a whole floor tenant, and naturally being specially anxious to get as large a tenant as this, we had pruned it down to absolute bed rock. The matter was put up to Commissioners Hodge and Strauss, and Mr. Strauss, while I'd hate to tell you what I think of the way he handled it, but he figured the thing down very, very low, made a proposition which we absolutely could not accept. We went back to see him and the other Commissioners several times and finally I dismissed the thing from my mind as being an impossible proposition from our standpoint. We couldn't meet their ideas. Finally our renting manager suggested to me that insomuch as the Public Service Commission in trying to protect themselves were desirous of enacting a clause into the lease by which they could give up a substantial amount of this space two years after the lease went into effect, that we might be able to get them by giving them a large amount of space which we had in the City Investment building at practically nothing.

We had space there on, I think it was the seventeenth or eighteenth floor, amounting to seventeen or eighteen thousand square feet, which we went back to the Commissioners and said we would give them for \$5,000 a year, and in that way, in figuring that space at practically nothing, we were enabled to make this lease with the Commissioners, with the net result that it brought down the square foot price to a very low figure. What that figure is I can't tell you now exactly, for I don't carry it in my mind.

Subsequent to that their demands for alterations in this temporary space which was being rented to them for two years in the City Investment building were so exacting that we made up our

mind it would be economy for us to put them temporarily on one of the floors in our own building, where we wouldn't have to make the expenditure or alterations that they demanded in the City Investing space, and that we did. The result was that we made a new deal with them by which they did not take the space in the City Investing building, but took all the space in the Equitable building. My own judgment is that this deal is a great deal better deal than they had before, not only from a question of dollars and cents, their net rent being reduced, but from the standpoint of efficiency of their force. They were spread over a great many floors in the Tribune building, whereas at the present time they have one and a half entire floors and another half floor in the lower part of the building.

Mr. Klein.—What rate did you offer, Mr. Mortimer? A. I can't recall exactly the figures.

Mr. Klein.—The figures published were \$1.70 in the Equitable and the sum of \$5,000 for the space in the Investing building, bringing the average rate down to \$1.39. A. I don't carry the original figures in my mind. I go over a great many transactions of this kind. The way the rate was brought down so low was through this transaction, by giving them practically free space in the City Investing building.

Q. Which of course they have not occupied? A. We have given them a better substitute.

Mr. J. Frank Smith.—What is the term of the lease? A. As I recall it, it is five years.

Mr. J. Frank Smith.—Did you substitute space in the Equitable building for space in the City Investing building during the entire term? A. During the two years. The idea of having these seventeen or eighteen thousand feet in the City Investing building was for the occupation of a great many city draftsmen who are now engaged in the subway improvement plans. They don't want to saddle themselves with a permanent lease which we demand, so we arrange for them this way. Believe me, Mr. Strauss protected the State in all his deals.

Mr. Moss.—I think the only clause in this report is what I read to you from page 2. "In 1912 a contract for the sale of the

site of the former building was entered into and after certain alterations and changes in the provisions of the contract the title passed April 24, 1913, by the terms of the contract of sale, and the purchase money, including loan mortgage taken in connection therewith, the city paid one-half of the taxes for the year 1914, and interest on the purchase money and mortgage at the rate of \$64,000 a year didn't begin to run until May 1, 1913, and payment of this interest from May 1, 1913, to May 1, 1915, or \$900,000 is to be deferred until November, 1918, when it is to be paid in ten semi-annual installments with interest." With a hurried examination of this report that is all that I have noticed, but if you could leave this copy with us until later in the afternoon I will return it to you. A. I think you will find that is all there is.

Mr. Klein.—What percentage of the Equitable building was occupied when you became superintendent? A. Oh, a little bit under 50 per cent.

Mr. Klein.—What per cent of space in the building does the Public Service Commission occupy? A. Now you are asking me something I can't tell.

Mr. Klein.—About 80 per cent of the building is now occupied.

Mr. Moss.—That is all, Mr. Mortimer.

Mr. Mortimer leaves stand.

Mr. Moss.—Mr. Klein, will you put in certain evidence and state what it is?

Mr. Klein.—I have a letter or report from the finance department with regard to the expenditures of the city for grade removals, the city's contribution for the removal of various grade crossings under various acts of the Legislature or other arrangements, total as given by the finance department for the past fifteen years is \$6,316,080.65, plus \$861,065.19, plus \$170,889.91.

According to the table prepared by the finance department the city's share of the cost of the removal of the grades and the raising of the Long Island Railroad tracks on Atlantic avenue, known as the Atlantic avenue improvement, was \$1,432,264.10, and the city's share for the elimination of grade crossings at Bay Ridge

and along the Long Island Railroad was \$2,015,000. The city's share for the removal of grade crossings along the Brighton Beach Railroad was \$802,187.41, and the city's share for the cost of bridges along Park avenue, known as the Park avenue improvement, from 45th to 56th streets, was \$861,065.19. The city's share for the construction of the viaduct over the Sunnyside yard of the Long Island Railroad and Long Island City was \$170,889. The city's share for the removal of the grade crossings along the Long Island Railroad was \$200,000, and the city's share for the removal of grade crossings on the main line of the Long Island Railroad between Sunnyside yard and Jamaica through Richmond Hill was \$375,000.

In the report prepared by the finance department the comptroller shows that under the law the city and State of New York each share one-quarter of the expense of eliminating grade crossings and the railroad half the expense, and especially cites the Woodside improvement as the subject of a special agreement dated July 20, 1911, between the city and the Long Island Railroad Company by which the city was to contribute \$575,000, in addition to the conveyance to the said railroad company title to property in certain streets which were to be discontinued and closed.

Of the sum named, \$575,000, \$375,000 has been paid by the city. The grant above referred to was subsequently ratified by legislation, chapter 330 of the Laws of 1913.

The comptroller also states: "Chapter 423 of the Laws of 1903 provided for the elimination of grade crossings on the Spuyten Duyvil and Port Morris branch and the Putnam division of the New York Central & Hudson River Railroad at Depot place, West 177th street and Fordham road by bridging the railroad tracks, and required that the railroad company construct necessary bridges and abutments, while the city was required to make all necessary changes in streets, construct approaches and pay damages to buildings. The work of eliminating the grade crossing at Fordham road was joined with that of constructing a new bridge over the Harlem river known as the University Heights bridge, the railroad company paying for that part of the structure which crossed the railroad tracks. The total cost to the city of the University Heights bridge, including approaches, was \$1,184,956.92.

Of this amount it is estimated that but \$25,000 is properly chargeable to the grade crossing elimination.

"Chapter 423 of the Laws of 1903 also provided for a change in the route of the Spuyten Duyvil and Port Morris branch of the New York Central & Hudson River Railroad Company and the 'elimination, abolition or avoidance' of crossings at Kingsbridge road, Broadway, Corlear street, Tibbett avenue, East 230th street, West 230th street and West 227th street. The change in route discontinued and avoided grade crossings at the seven points named, and it was not necessary on account thereof to provide new crossings either above or below grade. The city, under the law, was required to pay the 'cost and expense of acquiring all such lands * * * right of way or easements as may be necessary or required for the roadway and outer altered * * *'. The acquisition of land, etc., referred to cost the city approximately \$600,000, but as the railroad company paid the city \$50,000 for certain lands under water, the net disbursements by the city were but \$551,025, as indicated."

Accompanying the letter from the comptroller is an addendum containing the report of Nelson P. Lewis, chief engineer of the Board of Estimate and Apportionment, in which he says: "In New York State a newly constructed railroad is required to carry all existing streets or roads either over or under its tracks at its own expense, nor is it permitted to cross another railroad at grade. In the case of new streets which may be carried across an existing railroad the expense is divided equally between the railroad and the city, town or county. Where an existing grade crossing is to be eliminated one-half of the expense is imposed upon the railroad company, one-quarter upon the municipality or county and one-quarter is assumed by the State in view of the need of the work as an essential to public safety, which is of State-wide concern. In all cases the manner of the crossing must be determined by the Public Service Commission, and plans for the work and contracts for its execution must be first submitted to and approved by the Commission, to which body must also be submitted upon the completion of the work full information as to all items entering into the cost, which cost is then apportioned by the Commission in accordance with the provisions of the statute."

It would seem, Mr. Chairman, from this report that the city has spent large sums of money to improve railroads who had franchises originally for the laying of tracks on the surface of a street, and when the public convenience and safety became endangered were ordered to be elevated the city and State of New York entered into an arrangement whereby those communities were required to pay half the cost of the improvement or rather of the change of grade.

The statement suggested to the Commission an investigation into the equity of such an arrangement for the purpose of changing legislation. The Public Service Commission has asked for several million dollars in the last few years to be expended, with the railroads, for changing grades in various parts of the city.

The Committee took testimony the other day from Ernest C. Moore, the engineer and contractor who was awarded a contract to build ducts for the subway under contract No. 3. The Board of Estimate deliberated over whether the ducts should be classed as equipment or construction cost and finally entered into a stipulation whereby the classification should be determined by the Court. In the meantime the cost of material for the ducts' construction had advanced to such a point where Mr. Moore said he couldn't take the contract and make a profit.

The question of classifying duct construction such as came within the scope of Mr. Moore's contract, or equipment involved the expenditure of a million dollars under the contracts Nos. 3 and 4, the point involved being that if the ducts are constructed as part of the railroad structure, either elevated or subway, that the costs would be classified as construction and enter into general cost which the railroad and city share. If the ducts are separated from the subway structure, the contention of the Public Service Commission is if the ducts are constructed with the subway structure to class them as part of equipment to be paid for by the railroad company. In a number of contracts the ducts were constructed separate from the subway structure in which case the Public Service Commission also contended that the ducts should be charged as equipment while the city authorities, through the corporation counsel and the finance department contended that the ducts should be charged also, as equipment, this charge to be made against the railroad company.

This question involves the payment of a million dollars by the city in partnership with the railroad or by the railroads themselves. On this question the finance department has prepared reports for this Commission which are put in evidence in one of the reports dated February 14, 1916. The finance department says: "Under the opinion of the corporation counsel recently forwarded to this board in the case of the proposal of the Commission to construct a duct line in East 44th street, Manhattan, to the effect that ducts built in the street were properly an 'equipment' charge under the terms of contract No. 3, in that they were not 'built as a part of the permanent railroad structure,' it would seem that these ducts also came within the category and should have been paid for by the Interborough Company. In this case, however, they were included, in part, in the regular construction contract authorized by the board June 11, 1915."

I also put in evidence a letter of May 23, 1916, to Mr. Prendergast, which is as follows:

" May 23, 1916.

" Hon. William A. Prendergast, Comptroller:

" Sir.— On May 18, 1916, you referred to the Bureau of Contract Supervision a letter from Mr. Frank Moss, dated May 17, 1916, requesting records or reports that would show what ducts were charged to 'construction' in Public Service contracts, which, according to the corporation counsel, should have been charged to 'equipment' and also a statement showing the total cost of such ducts, which have been authorized to date.

" The ducts referred to are those which are constructed apart from the subway structure.

" The information as to cost, in complete form, could not be obtained from the record of this bureau, and the Public Service Commission was immediately informed by telephone of your wishes in the matter.

" On May 22, 1916, the Public Service Commission transmitted a statement of the cost of such ducts, but did not include Brooklyn and Queens lines, and gave expenditures to May 1, 1916. The statement is attached hereto.

“ The contractor’s bid sheets for all of the elevated sections involved, covering the items of duct excavation and railroad ducts, but exclusive of the cost of trench repavement and the items of electric conduits and ducts, show costs as follows:

Route 16, Section 1.....	\$72,968.00
Section 2.....	79,550.00
Route 18, Section 1.....	76,750.00
Section 2.....	52,230.00
Routes 19 and 22, Section 2.....	99,670.00
Routes 36 and 37, Section 1.....	14,340.00
Section 2.....	38,248.00
Section 3.....	68,375.00
Route 50.....	15,964.00
Route 39, Section 2.....	92,490.00
Route 49, Section 1.....	53,670.00
Section 2.....	62,926.00
	<hr/>
	\$727,181.00

“ The above schedule covers estimated costs on the items noted at the time the contracts were awarded. Together with repavement over trenches, extras and modifications, the total would very likely approximate \$1,000,000.

“ Respectfully,

“ Director.”

In connection with the elevated lines in Queens, forming part of the subway system—dual subway system—the following letters from the secretary of the Public Service Commission are appended:

“ Hon. Wm. H. Prendergast, Comptroller, City of New York, Municipal Building, New York City:

“ Dear Sir.—I hand you herein, for your use, a table of elevated railway sections with the approximate cost of the railroad duct construction on these sections to date of May 1, 1916, together with the approximate cost of one completed elevated section, in accordance with a request by Mr. Frazee.

"Approximate Total Amount Estimate Chargeable to Underground Conduit, Including All Estimates Submitted to May 1, 1916.

Route	Section	Regular		Article XII	
		Gross	Net	Gross	Net
16	1	\$75,115.09	\$65,243.21	\$1,353.33	\$1,170.47
16	2	80,890.47	68,852.22	9,157.84	7,785.46
18	1	111,446.09	96,840.44	2,204.97	1,984.47
18	2	57,548.10	51,039.38	269.64	238.77
19 & 22	1-A	Gross Reg. & Art. XII			
39	2	11,889.30	Final Estimate has been rendered on this section.		

Very truly yours,

"(Signed) JAMES B. WALKER,
"Secretary."

"May 25, 1916.

"Hon. Wm. A. Prendergast, Comptroller, City of New York, Municipal Building, New York, N. Y.:

"Sir.—I hand you herein, for your use, a supplementary and final table of elevated railway sections with the approximate cost of the railroad duct construction on these sections to date of May 1, 1916. The table transmitted under date of May 22, 1916, together with the following, completes the information for the above cost, in accordance with a request by Mr. Frazee:

"Approximate Total Amount Estimate Chargeable to Underground Conduit, Including All Estimates Submitted to May 1, 1916.

Route	Section	Regular & Article XII,
		Gross Estimated.
50		\$33,285.92
36 and 37	1	22,141.64
	2	55,613.32
	3	82,520.25
		<hr/>
		\$193,561.13

"Very truly yours,

"(Signed) JAMES B. WALKER,
"Secretary."

“ June 6, 1916.

“ Hon. Frank Moss, Woolworth Building, New York City:

“ Dear Mr. Moss.— In reply to your request of June 1, I am very glad to give you the following information in regard to the building of the new rapid transit lines in Queens.

“ These lines are officially known as Routes 36 and 37. They run from the Queensboro Bridge Plaza in two directions; one to the north through Second avenue to Ditmars avenue, Astoria; the other to the southeast, mainly through Queens boulevard and Roosevelt avenue to Alburtis avenue, Corona. The work was divided into three contract sections: Section 1 covers the junction section and station on the Queensboro Plaza; section 2 covers the line to Astoria and section 3 the line to Corona.

“ The routes and general plans for these lines were adopted by the Commission October 10, 1911; approved by the Board of Estimate and Apportionment October 26, 1911, and approved by the mayor April 8, 1912.

“ The construction contract for section 1 was awarded to Snare & Triest, the lowest bidders, August 21, 1913, for \$844,859 and at the present time about 93 per cent of the value of the work has been completed. This contract was approved by the Board of Estimate and Apportionment October 2, 1913.

“ The contract for section 2, Astoria line, was awarded to Cooper & Evans Company, the lowest bidders, February 4, 1913, for \$860,743.50, and approved by the Board of Estimate March 6, 1913. At the present time this work is 100 per cent completed.

“ The contract for section 3, the Corona line, was awarded February 7, 1913, to E. E. Smith Contracting Company, the lowest bidder, for \$2,063,588, and approved by the Board of Estimate March 6, 1913. At the present time this work is 100 per cent completed.

“ The contracts for the construction of station finish were awarded in two parts; one for sections Nos. 1 and 3 together

with Route 50 (Queens extension of the Steinway tunnel), and the other for section 2; the Astoria line.

“ The station finish contract for sections 1 and 3 and Route 50 was awarded to Snare & Triest, the lowest bidders, August 4, 1915, and approved by the Board of Estimate September 17, 1915. At the present time about 18 per cent of the value of the work has been completed.

“ The station finish contract for section 2 (Astoria line) was awarded August 18, 1915, to Charles Meads & Company, the lowest bidders, for \$268,102.50, and approved by the Board of Estimate September 17, 1915. At the present time about 37 per cent of the value of this work has been done.

“ The contract for track installation, covering all three sections of Routes 36 and 37 was awarded November 16, 1915, to the Thomas Crimmins Contracting Company, the lowest bidder, for \$204,898.10, and approved by the Board of Estimate December 3, 1915. At the present time about 16 per cent of the value of the work has been completed.

“ It is the intention of the Commission to place these lines in operation before the end of this year. The first operation will be of trains from the Second avenue elevated railroad, in Manhattan, over the Queensboro bridge. A few months later it is hoped to get the extension of the Queensboro subway (Steinway tunnel), completed so that operation of trains from that line may be had over the Astoria and Corona roads. Still later, when the Broadway subway in Manhattan and the tunnel under the East river at 60th street are completed, trains from the New York Municipal Railway Corporation's system will operate through that tunnel over the lines to Astoria and Corona, the Brooklyn company having trackage rights thereon under the Dual system contracts.

“ I do not know why this work was begun before work on the elevated lines in the Bronx and Brooklyn was undertaken. Neither can I tell you at this time when it is expected the Queens lines will be able to earn interest on the bonds issued by the city and the operating company. I shall try to have an estimate made and submit it to you later.

"All of the records of the Commission in regard to these lines are at your disposal.

"Very truly yours,

"(Signed) JAMES B. WALKER,
"Secretary."

The city of New York has instituted street opening proceedings and acquired property in the amount of fifteen million dollars since the construction of subways began.

The proceeding now under way for the extension of Seventh avenue south entails the expenditure of about seven million dollars on the part of the city. This property is being acquired as a street opening proceeding. It is a similar proceeding to that of the widening of Elm street, the widening of Delancy street, the widening of Joralemon street in Brooklyn for subway purposes.

The cost of these proceedings have been assessed either on the city at large entirely or on the city at large and part on the adjacent property owners. The fact that so large sums of money are involved in these proceedings would make it important that the Committee inquire into the advisability of legislation to include the cost of these street opening proceedings for subway purposes in the cost of subways or as improvements to be assessed directly on the property owners, irrespective of the cost of subways.

Senator Thompson.—There are two matters that are important that I want to call attention to, in connection with the Public Service Commission. Perhaps we had better have the engineer here this afternoon, or Mr. Turner, deputy engineer.

It seems that at Atlantic avenue in Brooklyn there has been constructed a passageway enabling the passengers from the Long Island Railroad or the passengers from the Interborough Rapid Transit Company to pass underground directly to the Fourth avenue subway. It seems that has been entirely constructed and there is only a question of a board between. For six months that board has been allowed to stay there and the public have been inconvenienced and not permitted to use this passage on account of the fact that the B. R. T. and the I. R. T. have been arguing as to who should pay the expense of constructing a ticket booth there.

Another thing is that the loop here on this side of the bridge — the passageway there for the trains so they can make a complete loop has been constructed for years and the city is paying interest on the money while the people are not getting any benefit from it. That is on account of the disagreement between the bridge commissioner of the city of New York and the Brooklyn Rapid Transit Railway, and that should be called to the attention of the Public Service Commission. I'd like to know why they don't take this subject up and settle it. We will ask Mr. Turner this afternoon.

Mr. Shuster is now preparing for the record the testimony, exhibits and reports of the expert accountant in relation to the Brooklyn Rapid Transit system and subsequently they will be turned over and delivered.

We will now suspend until half past two o'clock.

Suspension.

Additional testimony of Mr. MARSH.

Mr. Moss.— Mr. Marsh has supplied the following material to be added to his testimony:

“ June 30, 1916.

“ Hon. George F. Thompson, Chairman, State Legislative Committee, Municipal Building, City:

“ My Dear Sir.— In compliance with the request of Mr. Moss made to me this morning as a witness, I enclose copies of two letters sent by officers of this league to members of the Board of Estimate and Apportionment. The map that I showed to the Committee was prepared at our request in the Register's office in accordance with the law. It shows that the New York Central Railroad Co. is endeavoring to secure control over much of the land along the west side of Manhattan.

“ If there is any further information that we can give you we shall be very glad to do so. We shall shortly have prepared a study showing the land owned by the New York Cen-

tral and by the subsidiary companies, with which it is affiliated.

“ Sincerely yours,
“(Signed) BENJAMIN C. MARSH,
“ Executive Secretary.”

“ June 11, 1916.

“ Hon. John Purroy Mitchel, Mayor, and Members of the Board of Estimate and Apportionment, New York City:

“ Gentlemen.— The implied threat of the New York Central Railroad Company, that it will tie up freight deliveries in New York city, including the food supplies of the population, if it does not secure the franchise which it seeks, should not have any weight with the Board of Estimate and Apportionment. Such an effort of a corporation to intimidate a city into granting a valuable franchise on too favorable terms raises the question as to how that corporation secured franchises and other privileges in the past.

“ The city authorities, as well as the public, will appreciate that to carry out such a threat will involve interference with interstate commerce — a serious offense in this country.

“ The New York Central Railroad Company has been quietly acquiring property for some time along the line of the proposed route, with the view of getting control over the industrial development of the west side, referred to in our previous letter to you. The company, however, has operated recently under the name of the New York State Realty and Terminal Co. The officers of this company are given in the 1915 Directory of Directors as follows: Alfred H. Smith, treasurer (president); Dwight W. Pardee, secretary; Edward L. Rossiter, treasurer. Capitalization \$100,000. The officers of the New York Central Railroad Co. are given as: Alfred H. Smith, president; Dwight W. Pardee, secretary; Edward L. Rossiter, treasurer. Capitalization \$400,000,000. There is complete interlocking of directors. There is an almost complete interlocking directorate. Only one director of the New York State Realty and Terminal Company is not a director of the New York Central Railroad Company.

“ The directors are as follows: Directors of the New York State Realty and Terminal Company — William K. Vanderbilt, Frederick W. Vanderbilt, William Rockefeller, Chauncey M. Depew, James Stillman, William H. Newman, George F. Baker, Alfred H. Smith. Directors of the New York Central Railroad Company — Chauncey M. Depew, William K. Vanderbilt, William K. Vanderbilt, Jr., Frederick W. Vanderbilt, Harold S. Vanderbilt, William Rockefeller, William H. Newman, George F. Baker, Alfred H. Smith, Ogden Mills, Robert S. Lovett, Marvin Hewett, Leonard J. Hackney, Frank J. Jerome, Horace E. Andrews.

“ During the past year the New York State Realty and Terminal Company has acquired forty-three parcels of real estate on the west side, chiefly on the west side of Washington street between Gansevoort and Spring streets, and on the cross streets west of 10th avenue from 30th street to 19th street.

“ The assessed value of these properties was, in 1915, \$846,000, the buildings being assessed for \$217,000 and the land for \$629,000. The New York Central Railroad Company owns a vast amount of real estate in this district in its own name, previously acquired.

“ It is well known that a large proportion of the capitalization of the transcontinental railroads, such as the New York Central Railroad Company with its subsidiary lines, is based upon the value of their terminals. The New York Central Railroad Company is reported to be the second largest owner of real estate in New York City. It certainly is one of the largest. It has acquired land at relatively low prices, and the increase in the population and the public improvements paid for by all the people have enormously increased its value.

“ The present effort of the company to secure a franchise from the Board of Estimate and Apportionment on terms which secure to it the monopoly of freight carrying on the west side, resulting in large fortunes through increases in the value of their land, must be condemned most strongly. There can be no excuse for granting this franchise sought by the New York Central Railroad Company. The city authori-

ties must deal with the corporation as a creature of the law-making and franchise-granting authority of the State, and not as a dictator of municipal policies and the controlling factor in carrying food supplies and other necessities of a large portion of the city's population.

"Yours truly,

"(Signed) FREDERIC C. HOWE, President,
JOHN J. HOPPER, Chairman,

"Committee on New York Central Railroad Company Terminal of the League for Municipal Ownership and Operation."

"June 1, 1916.

"Hon. John Purroy Mitchel, Mayor, and Members of the Board of Estimate and Apportionment, New York City:

"Gentlemen.—We respectfully urge that you do not approve the pending franchise for the rail terminal facilities for the New York Central Railroad Company on the west side of the boroughs of Manhattan and the Bronx.

"We are aware that this company is probably the second largest payer of taxes in the city, but much of the value of its land holdings has been added by the growth of the city since purchase by the company.

"The contemplated plan for the west side would not only give this company a virtual monopoly from a practical point of view of freight carrying in Manhattan, except possibly at large wasteful cost to other railroads, but would afford it control over the development of industry on the west side. It is extremely improbable that the company would run its line through the blocks south of about 40th street, as contemplated in the plans, but highly probable that after having secured options on those blocks, which it has recently acquired, it would try to secure the use of the marginal way to the exclusion of other railroads.

"There seems no reason to doubt that the New York Central plans ultimately to have a tunnel under the North river, which will give it absolute monopoly and enable it to dictate to other freight carrying railroads. Its branch, the West

Shore Railroad, is now the largest freight carrying railroad into the city, except the Pennsylvania Railroad.

"It is not inappropriate to recall to your memory the record of the New York Central Railroad Company in the past.

"In Appendix 'A' of the report of your committee on port and terminal facilities the corporation counsel states this record, which should warn us to great care in conferring further privilege upon this great corporation.

"The Hudson River Railroad Company secured authority to operate within the city of New York in 1847, and in 1869 after consolidation with other corporations secured the extension of its corporate existence from the fifty years granted it by the Legislature in 1846 to five hundred years. The validity of this franchise was upheld by the Court of Appeals on an action brought by the New York Central Railroad Company to restrain the removal of its tracks by the corporate authorities from the streets of the city between Spuyten Duyvil creek and St. John's Park.

"The highest court of the State has, therefore, decided that this corporation may exercise rights granted it until 2346, for four and a third centuries from the present date. The right to a perpetual franchise, or even a franchise of five hundred years, must be contested in the near future.

"We respectfully submit that your honorable body should not grant any monopoly to such a corporation until its franchise is limited to a reasonable period — not to exceed twenty-five years — with the opportunity for renewal upon terms mutually satisfactory.

"At present the Pennsylvania Railroad Company controls the Queens water front terminals, the New York, New Haven & Hartford Railroad and the New York Central Railroad, the Bronx water front terminals and the Baltimore & Ohio, the State Island terminals, while during the delay on the part of the city in developing the South Brooklyn terminals the New York Dock Company and the Bush Terminal Company are securing that water front.

"The city should do five things before granting a franchise to the New York Central Railroad Company:

" 1. Preserve opportunity for other railroads in the commercial district below 16th street, or at least below 40th street.

" 2. Preserve the aesthetic features of the Hudson river shore in the northern part of the island and in the Bronx.

" 3. Accept the offer of the New Jersey State Board of Commerce and Navigation to appear before the Board of Estimate at a public hearing.

" 4. Require the New York Central Railroad Company

- (a) to state what arrangements, if any, it has made with the other railroads with termini in the city or in New Jersey to use its tracks in Manhattan;
- (b) to state what property it has secured adjoining its protected line and adjoining the marginal street on the west side of Manhattan;
- (c) to agree to shorten the life of its franchise, as noted above, with renewal privilege.

" 5. Ascertain the increased value to the New York Central Railroad Company of the franchise it seeks.

" Your honorable body is doubtless apprised of the means of the New York Central Railroad Company, early adopted, to throttle its competitor, the New York, New Haven & Hartford Railroad, and to keep up passenger rates within the city.

" Failure on the part of the city authorities to impose these terms will lend weight to the charge that this great corporation is attempting to dragoon the city into increasing its privilege, add bitterness to the general regret that the mayor vetoed the bill prepared by the Citizens' Union to compel this corporation, with its long record of exploitation, to come to terms.

" While New York City apparently controls its water front, the system of long term leases to steamship companies at a nominal rental makes that control more apparent than real, and it must not surrender any further control.

" Our criticism is not merely destructive; we urge city control instead of railroad monopoly. All other great sea-

ports are adopting public control and administration of their terminals to attract commerce.

“ We have given away a principality in our dual subway system and kingdoms in perpetual franchises for other transit lines and public utilities which it will be the task of the next two or three city administrations to recover for the people. It is time to call a halt in the surrender of the city's rights to private greed.

“ The original plan of the New York Central Railroad, submitted in 1911, is not perfect, but with minor modifications is infinitely superior to the proposed plan of the port and terminal committee.

“ A workable plan can be developed promptly to give the city control. We submit the following statement from the preliminary report of the Chicago Railway Terminal Commission:

“ “ It is already clear, however, that the key to the solution of our railway terminal problem — with respect to freight as well as with respect to passengers — is to be found in the substitution of joint and co-operative terminals for separate and competitive terminals; this substitution to be brought about, not by some sudden or drastic adoption and execution of a complete revolutionary plan covering the whole railway terminal situation, but by such steps as may be taken from time to time with due regard to financial and operating conditions. Certain important steps of this character undoubtedly can and should be taken at once in the near future for the establishment of co-operative terminals and the readjustment of existing terminals to conform to correct principles of terminal development. But the essential thing is that from now on no steps shall be taken in the opposite direction, thus creating unnecessary barriers to proper development in the future. The city should co-operate cordially in assisting the railroads in the execution of all plans that are in the right direction.

“ “ If each railroad seeks to extend its own terminals not only into the central business district, but also into each of the outlying local centers, it is apparent upon principle and

demonstrated by experience that the result is unsatisfactory both to the city and to the railroads as a whole.'

" This applies exactly to our situation. We need co-operation not competition in terminal facilities. Would it not be well to call an expert like Mr. Bion J. Arnold into consultation ?

" There are several ways in which the publicly owned elevated freight way, for the use of which all the railroads would pay, can be financed :

1st. By direct taxation ;

2nd. By assessment upon the property benefited ;

3rd. By loans, since the fact that the New York Central Railroad Company wants the franchise shows that the undertaking will be profitable, and hence the bonds will not be included in the debt limit, as it is self-sustaining ;

4th. A combination of the three methods above enumerated.

" The courts will undoubtedly sustain action to compel the New York Central Railroad Company, should it prove recalcitrant, to comply with this plan.

" Sincerely yours,

" (Signed) FREDERIC C. HOWE, President,
JOHN J. HOPPER, Chairman,

" Committee on New York Central Railroad Company Terminal of the League for Municipal Ownership and Operation."

AFTERNOON SESSION

Mr. Moss.— Mr. Chairman, before I ask you any questions, Mr. Tomkins, the witness, who came from the State Insurance Department, brought the report of the chief examiner on the Equitable Life Insurance Company. There are just three sentences that I want to read into the record from this report as bearing upon the Mortimer and Public Service Commission question. First, this sentence: " In 1912 a contract for the sale of the site of the

former building was entered into, and after certain alterations and changes in the provisions of contract the title passed, April 24, 1913. By the terms of contract of sale and the purchase money and building loan mortgage taken in connection therewith the society paid one-half of the taxes for the year 1914, interest on the purchase money and mortgage at the rate of six hundred thousand dollars a year didn't begin to run until November 1, 1913; a payment of this interest from November 1, 1913, to May 1, 1915, for \$900,000 is to be deferred until November, 1918, when it is to be paid in ten semi-annual installments with interest." I take the meaning of that is that a deferred payment of interest for \$900,000 begins to be paid in 1918 and will be spread over five years, so that \$900,000 will not be paid up until 1913.

On page 6 the examiner says: "I have also made a comparison based upon ledger accounts. The item of salaries, compensations, etc., of officers paid at the home office would seem to indicate an increase during the four years last past in salaries of officers and assistants, which is more than offset by the decrease in the compensation paid to clerks and other employees."

On page 83: "Had the society computed its gross surplus December 31, 1914, on a market value basis, using the June 30, 1914, quotations, the result would have been a decrease in gross surplus of \$18,922,845." These quotations are read as bearing upon the proposition which seemed to come out of the testimony of Mr. Mortimer that the Equitable building needed tenants. Now, Mr. Tomkins, you have been sworn and I have called you as a former commissioner of docks and as a man well known in the community for a knowledge of the port and its terminal facilities and prospects and as a man who had a large vision for the present and the future interests of this city in its water front. I think you have been quoted many times as declaring for the wonderful future of the New York water front and as being desirous of conserving those great interests for the benefit of the people of New York and as opposing private interests that you say, have said before, have been scheming to get possession of it. I think you said to me recently, "The subways are gone; that can't be helped, perhaps, but the water front is still here and it ought to be saved to the city." I think substantially I have quoted you. Now, I

don't want to limit you by leading strings of any kind. I want you, if you please, to tell us what, in your opinion, are the greatest dangers of this Central Railroad proposition and then discuss it along in your own way.

Mr. Tomkins.— Mr. Chairman, I think the way in which the city can recoup the great expenditures for subways is by balancing those expenditures with a comprehensive system of terminal improvements at the port which shall make it a cheap place to bring in and send out raw materials and finished products. If New York is a cheap manufacturing center and a decent place to live in, it can recoup these enormous expenditures for local expenditures. My plea has been not so much for any specific west side Manhattan plan as for a national port of conservation policy. The port of New York is a national organization and it is also a municipality, and it is the difficulty of managing the national port facilities by the city officers that makes this trouble that we are confronted with.

We have virtually two organizations, the port and the city. It is outside of the physical capacity of the Board of Estimate to do both things properly if they work on full twenty-four hours, and to my mind it is very important that the railroad terminals at the port of New York should be placed under federal control; I don't think the city is competent to handle them. Possibly the State and the city together might do so, as they have done in San Francisco and New Orleans and as the Dominion of Canada is doing at all its ports, but I question that any control other than that of interstate commerce will be sufficiently strong to handle this terminal situation at the national port of New York.

Mr. Moss.— Just a moment, Mr. Tomkins.

Senator Thompson.— Mr. Willcox, this Committee has arranged with Mr. Willcox I guess probably ten or fifteen times to take his testimony and hear his statement in reference to this dual subway contract and the proceedings leading up to the history of it, and I think there has been a half a dozen times Mr. Willcox has asked the Committee to take the matter up. At those times we were so situated that we couldn't do it. Our engagements and his have interfered and I was unwilling as chairman of this Committee

to adjourn without taking that testimony, so we sent for him to-day. Mr. Willcox finds himself to-day pretty well tied up with a lot of things that come to a man in the position in which he finds himself unexpectedly, so that we have taken it up inside and arranged a manner in which to take this testimony which I think will be satisfactory to the Committee. I understand, Mr. Willcox, the events of the past few weeks have rather taken your mind away from this subject and that you now desire time to get your memory —

Mr. Willcox.— I'd like to prepare a statement of the history of this matter in order to have it on your records, but I would also like to appear with that statement at some of your future meetings so that you can question me regarding any facts or statement that I make or any other points connected with it, and in doing that, I want to say to you that I realize some question might be raised in some quarters as to the time when your investigation will be ended. As far as I am concerned it will be a favor to me to make that statement at some future meeting, and I certainly will take no advantage —

Senator Thompson.— You rather commit yourself —

Mr. Willcox.— I'd prefer to have your counsel examine me, and I don't think we would have the time now to go into it. I would like to go into it at length in order to put the matter before you as I have thought to put it before the Committee.

Senator Thompson.— We have taken some statements in the other room which will be covered by the statement made later. The Committee will fix a date later, probably the latter part of next month, so as to give ample time to get this matter prepared. In that way we will have the benefit of your history and you will also have the benefit of the opportunity to give this statement, because there are certain matters on our record that might be a reflection of some serious import in case we never did hear Mr. Willcox's side of the affair. So we will suspend the judgment on all matters that we assume Mr. Willcox knows about until later on.

Mr. Willcox.— I am extremely anxious to put my views of the dual contracts or any other act connected with the Public Service Commission work when I was Chairman before this Committee,

not only to present the matter that I want on your record but to submit to any questions that you have to ask.

Mr. Moss.—I was very glad to consent to an adjournment upon Mr. Willcox's statement that the examination shall be on our part just as full and complete as though there were no question about the expiration of the time fixed for taking the testimony.

Senator Thompson.—That has been agreed upon. The understanding further is that when Mr. Hughes shall have been elected President that our power of subpoena still continues forceful and we can get you any time we want you. So that there won't be any question, I take it, as a suggestion from my colleague, Senator Lawson, that we are giving no undue favors to Mr. Willcox simply because he happens to be Chairman of the Committee of which we are members. Any one who has information, of course we will hear it after the first of the month. I don't feel we are giving any undue discrimination in favor of Mr. Willcox here by this arrangement.

Mr. Moss.—That is the position that I announced some time ago, and I thought we all agreed whoever had any information to give and any reasonable consideration for vacation purposes or anything else would be given to anybody.

Senator Thompson.—I desire to have it perfectly understood in coming back here to hear this man is given as a personal favor. I feel that my duty is performed to-morrow in this investigation, and I am not under obligation to take testimony any further. I have given one year to it and I don't believe it is my duty to go beyond the time limit. However, I am doing it as a matter of a favor and I want it so understood. At the same time we will give the commonest citizen the same favor.

Mr. Calvin Tomkins.—This is a map showing the water front, the Ninth Avenue Elevated Railroad line and the private right of way of the New York Central through this extension. The district bounded by the Hudson river and the Ninth Avenue Elevated Railroad is the terminal of the west side and Manhattan, and it is of the utmost importance to the city of New York and the country at large that its capacity for national utilization should be conserved in every possible way. The original plan of the rail-

road which I reported favorably upon in 1911 provided for a railroad — elevated railroad — along the marginal way next to the docks, leaving open the opportunity for its use subsequently by all the other railroads as well as by the New York Central. The present plan, changed by the city, places the line of the railroad in the middle of the blocks from Canal street north to 30th street, or approximately, and by so doing it shortens the blocks in the lower districts as to make them unavailable for use by any railroad except the New York Central. It also makes a bad plan for the New York Central itself, in comparison with the Central yard above 30th street, which is very much more convenient and in which the plan is utilized for traction purposes far more effective. It entails a heavy expense upon the railroad for acquiring the right of way when it might use the public highway for that purpose. Now, to my mind the vice of this plan is that it precludes the possibility in the future of getting the New Jersey railroads into terminals on the west side of Manhattan and in that way militates against the interests of the entire country as well as against the interests of the city of New York. I doubt if the city of New York itself can act much longer as trustee for the port interests of the nation at New York, and to my mind it is very desirable that the city should not take this action at this time which will prevent the maximum use for national purposes of the port of New York.

Senator Thompson.— I'd like to know right now should the city at this time or any other time so convey the fee of lands along the river or under water as to give the control of the dock privileges of the city of New York or any part of it into private hands — A. It has not been the policy of the city of New York to give the port to private supervision. I think it is desirable that the railroad facilities and the dockage facilities should be public. The city has acquired it at great expense, most of it west Manhattan water front below 72d street. If it were possible to do so it should have all of it. In the original plans that I laid out as Dock Commissioner it did provide for a marginal street railroad all along above 72d street. It did permit the Central to utilize and own the district just south of 72d street between that and 59th street. I think it is immaterial whether it is city or Central ownership

now, because the national control is being extended so rapidly over the lines that the question is not so important as it formerly was.

Now, I'd like to read from the Chicago Terminal Committee's report of 1915 as follows, because this is the gist of the whole thing: "Co-operation will not easily or quickly become universal. Competitive traditions and preferences will here and there survive. It is already clear, however, that the key to the solution of our railway terminal problem, with respect to freight as well as with respect to passengers, is to be found in the substitution of joint and co-operative terminals for separate and competitive terminals; this substitution to be brought about, not by some sudden or drastic adoption and execution of a complete revolutionary plan covering the whole railway terminal situation, but by such steps as may be taken from time to time with due regard to financial and operating conditions. Certain important steps of this character undoubtedly can and should be taken at once or in the near future for the establishment of co-operative terminal development. But the essential thing is that from now on no steps shall be taken in the opposite direction, thus creating unnecessary barriers to proper development in the future. The city should co-operate cordially in assisting the railroads in the execution of all plans that are in the right direction.

"It is clear that the continued application of the principle of competition in terminal development can only result in increasing the difficulties of any logical improvement in the terminal facilities of the city as a whole, and it is clear that the competitive principle is anything but economical from the point of view of railway operation. In any great industrial community such as Chicago there develops not only one principal business district, but also outlying and widely separated local centers of industry and traffic requiring facilities of transportation and offering profitable returns to the railroads which furnish such facilities. If each railroad seeks to extend its own terminals not only into the central business district but also into each of the outlying local centers, it is apparent upon principle and demonstrated by experience that the result is unsatisfactory both to the city and to the railroads as a whole."

Now, my claim is that if this private right of way is substituted for the public right of way along the marginal streets the

other roads cannot use it, even if the federal authority should decide it desirable that they should do so in the future, because the physical plan imposes the law of development along the localities and it kills any co-ordinate railway development.

The difficulty of the situation is that the New York Central is ready to act now; it knows its mind and is ready to go ahead. New Jersey is not ready. They have to come together, compose their several interests, build the tunnels, or better, a floating organization, and enter into a relationship with the city and the Central for the use of the marginal way and provide inshore terminals. All that is too much for the New Jersey roads to undertake. They are, as a result, quiescent, no suggestions to make, and the situation is likely to go by default. Ultimately the city will buy all the railroads. Mr. J. Spencer Smith, president of the New Jersey Harbor Commission, has stated the situation as follows: "The proposed New York Central settlement plans will so cut up the district between the Ninth Avenue Elevated Railroad and West street that there will not be room for the establishment of facilities for the other roads, and the reservation of the right of the city to cross within the lines of streets either below or at grade is, in my judgment, of no importance or value whatever."

That is the opinion of the president of the State Commission of New Jersey in that matter.

The Interstate Commerce Commission through Commissioner Dow wrote the Jersey City Chamber of Commerce some time ago as follows: "I think there is an abundant field for improvements in the conditions under which terminal services are performed in New York and Jersey City harbor, but, as stated, they are beyond the power of our committee on regulations except as we can appropriate."

My suggestion, Mr. Chairman, is that the city of New York before acting in this matter should approach the Interstate Commerce Commission on its suggestion here, ask for helpful suggestions as to the location of this west side line. I don't think that the municipal authorities are competent to deal with this national question. They are regarding the purpose from the point of view of local importance. There is even quite a good deal of jealousy developed between the city of New York and the State authorities

of New Jersey, and the latter have not been given a public hearing. They have had a hearing in executive session, but the matter has not been given the attention it should have.

My plan is that this Committee should be made which will impose a physical plan upon the city that can't be gotten away from and will control city port development here indefinitely; that the Interstate Commerce Commission should be asked its opinion as to this organization. The Interstate Commerce Commission have not the authority to dictate physical organization, but they have in this letter indicated their willingness to make helpful suggestions, and inasmuch as the problems and complications growing out of this situation will come home to that Interstate Commerce Commission, I think they will be inclined to give attention to this.

In my judgment the Board of Estimate and Apportionment at this time is not competent to deal with this national question by itself. In a discussion with Mr. Bush at the Chamber of Commerce to-day he summed up the debate by stating that if this improvement were now made and the Central were given more terminals and better terminals than they have had, it would compel the New Jersey railroads to take action and do something, too. And the answer is that the opportunity is not left open for the Jersey railroads to come into terminals in Manhattan, and it is important that the opportunity should be afforded them to come into terminals here or otherwise they can't come and shall have to continue this extravagant, expensive arcade floating system of transit between New Jersey and New York which is already a great handicap upon the industries and commerce of this community and driving trade and factories and people to New Jersey.

Mr. Moss.—Mr. Bush is going over there now, to Bayonne, isn't he? A. Yes. Mr. Bush recognizes, and I have gone over there myself — my factories are over there — the opportunities are in New Jersey. They are not in New York because the railroad terminals are there. New York was developed as a port when water communication was a primary consideration. Now the railroad consideration is the dominating factor, and the port and where the railroad terminals are, there is the opportunity.

Mr. Moss.—And we have got to have them in Manhattan. A. Until we can overcome it the tendency will be for the ships and

the industries to go to New Jersey, and it is proposed to cut up this belt on the west side of Manhattan in such a way to make it physically impossible for even the Interstate Commerce Commission to create conditions under which the New Jersey railroads can be extended.

Mr. Moss.—In the old days the water made our port, and in the new days the water will unmake our port if we don't meet the new conditions. A. Unless we adjust ourselves to those conditions. The railroad terminals are there. We must bring the railroads over here. The New Jersey situation is interesting, too. Their water front is barricaded by this system of car floats just as Manhattan is, and they get less out of it because they are not using theirs for loading and unloading; that has gone into Manhattan. New Jersey has no large port and has to send their commodities over to be unloaded in Manhattan and then take the freight back to New Jersey. They want to get rid of this car float barrier. Further than that, Mr. Brandeis has recommended that the light bridge charge for this service which is now absorbed by the railroads should be based upon commodities coming to New Jersey. It is only a question of time in my mind when the free light bridge which we enjoy now will be done away with, and that would be an added disadvantage, but in the meantime we should make it as easy as possible for these railroads to come to New York.

One by one the inshore terminals of the railroad have been taken out of Manhattan because of the interference of the two lines of travel, north and south and east and west. Now, we shall have the opportunity for an administrative unit organization in Manhattan to control transit and prevent interference with travel. The opportunity is there and it should be carefully preserved.

In your proceedings the other day I noticed the elevated lines at Coney Island were referred to as interfering with the transit from Brooklyn to Coney Island. That is precisely the situation here. New Jersey roads can reach Manhattan, but they can't get across that barrier, and in order to avoid just that kind of complication I believe that this terminal district should be conserved for its maximum utilization in the future, and I think it very desirable that the city should not act favorably upon this project which is now before it.

If it does the possibilities of future development will be greatly curtailed as a consequence of a bad city plan irrevocably imposed on the district.

Senator Lawson.— The conclusion is that it confers a monopoly on one road, whereas it should be a national proposition. A. It is not so much the monopoly feature as the fact that the plan precludes the possibility even of breaking through that monopoly in the future by the Interstate Commerce Commission. If the Central had a plan here on the west side of Manhattan I wouldn't strenuously oppose it, because I believe the federal control would override the municipal control, but the physical plan here is thoroughly wrong, and when it crystallizes into rigidity you can't get away from it and you will be developing a new science. It will be far worse than the surface tracking which we are trying to get away from now.

Mr. Klein.— One of the members of the Board of Estimate approves that New York Central plan. If the railroad is not built, what will the effect be on the city or on that part of the town? A. Well, if the plan is approved the New York Central will have the right of condemnation under it, I presume. If they have that they can acquire property there that will give them the control, virtually, the control over those blocks, and it will lay the basis for a speculation, but that, in my mind, is not so serious as that the plan itself is wrong. I believe that ultimately the probability is that the railroad will in any event be put on the marginal way and not on the back. I think that the New York Central and the New Jersey Railroads will compose their differences and make some kind of a bargain, but it would be far better that the city should outline the conditions.

Mr. Klein.— In the meantime the parcels being bought up by the New York Central representatives — are they to be used for warehouse business? A. Yes. No, I don't know what the Central are buying here. I am not conversant with that. They may be interested only in the right of way; maybe more than that. I call your attention to the admirable layout that they have arranged in the district between 72d street and 59th street. That is the correct physical organization of that part of the terminal belt from

the river back to the Ninth avenue line, and it permits of the maximum utilization of all of the area for car storage for commercial buildings and for industrial buildings. At 30th street they turn the line and run inshore through the middle of the blocks, cutting into the district so as to destroy it for the other roads and spoil it for themselves, which is illustrated by the Canal street terminal, which is the first one they have laid out, and the Board of Estimate shows up the defects of that terminal in better language than I can. "The actual capacity of the Canal street station will be 241 cars. The business entering New York by one of the trunk lines from New Jersey at one of its pier stations alone in the immediate vicinity of Canal street would fill that station twice over. It will therefore be seen that there is no force in the argument that this is to be a large terminal to which other railroads should have access." In other words, the terminal is a very inferior terminal and there is only room for a few between Canal street and 30th street, and they would use up maybe four terminals for the Central itself, excluding the other roads from participating.

Mr. Klein.—If the New York Central were to control the terminal along the west side, what effect would that have on the value of the city's docks or piers? A. Well, it is hard to say. I think if the railroads are compelled to use the city's docks for car floats they will pay, and they do pay now, very high prices for them, because it is the only method of access to lower Manhattan, but it is a wrong use to put the docks to.

Mr. Klein.—Mr. Tomkins, will you explain to the Committee the South Brooklyn terminal project? A. The South Brooklyn terminal project as I originally laid it out provided for a central car float at Conover street midway the Bush and New York dock terminals and back of the car floats, approaching a big classification yard. That is the usual arrangement in the Bush terminal and New Jersey and elsewhere, the idea being that freight would float to the Central classification yard and from there be shipped over the floats to New Jersey. The idea was that we should have the total freight output of the Bush terminal and the New York Dock Company's terminal should be concentrated at one point; it would greatly increase the efficiency of that terminal. That is

what makes the west side of Manhattan so valuable, badly organized as it is. They get quick service, and that is the desiderata everywhere, and every terminal is attempting to secure all the freight it can in order to develop the quality of its service.

After making the arrangement for tracks extending either way the Conover street terminal was cut out. Then the real estate speculation began and the city paid a high price for the classification yard, which was of no use as long as the car float was taken away.

Mr. Klein.— You mean the property of the First Construction Company will not be used for a classification yard? A. It is of no use now because there is no approach to it. It leaves the control of the South Brooklyn terminal to the Bush and New York Dock terminals, and the comprehensive plan utilizing the central approach has been quashed for the time being. That is the reason I presume that the railroads have so little interest in it.

Mr. Klein.— Why was the original plan changed? A. I can't tell you.

Mr. Klein.— Who changed it? A. I don't know who was directly responsible for changing it. I pushed it as long as I could; it was changed when I left the office.

Mr. Klein.— Doesn't the responsibility rest with the Dock Commissioner? A. It would have rested with me if I had —

Mr. Moss.— You have put the stress of your remarks upon the national character of the port and what the Interstate Commerce Commission might do. Doesn't it seem to you that the city of New York itself ought to have a sufficient comprehension of her greatness and the essentials of her greatness and a sufficient vision for the future to do these things herself without being prodded by any national organization? A. Of course it should, and the city should at least do nothing to create stumbling blocks to this development, which is clear enough ahead of us now to see what is coming. There is a great jealousy throughout the United States affecting the gates of New York by other cities and other States, and as long as conditions are as intolerable here as they have been during the last year with our congested terminals there is reason for that. If we could change our policies and cease regarding

these port terminals as merely municipal affairs, given to create the sentiment that New York is the national terminal of the entire country, you would do away with a large amount of their jealousy and we would get port appropriations for harbor improvements that we don't get now, and I think if we could take that larger view of the situation here it would materially improve the opportunity of the city, because every acre of farm land north of St. Louis and east of the Rocky Mountains is dependent as a matter of fact on the terminal facilities of New York. There are three natural routes, the Mississippi, the St. Lawrence and the Mohawk and Hudson valley to the east, and it is this Mohawk and Hudson valley that is the governing factor, the regulator of transportation in the United States, and it is vital to the country's needs as well as the city that the terminal and the port of New York as well as the route across the State of New York should be developed to their maximum efficiency.

Mr. Klein.—Our information is that the approaches to this terminal are over the property of the New York Central. Would this create a monopoly? A. It wouldn't necessarily create a monopoly, since I believe the Interstate Commerce Commission have not the power to regulate physically the operation of railroads, but they are rapidly advancing in that direction. They have regulated railroad terminals and made them susceptible to joint use. As buildings go up along this right of way, as the dock front becomes committed to its use under the new arrangement, it will not be profitable to change it.

Mr. Klein.—The point is that the drive was to the terminal over private property? A. Yes.

Mr. Klein.—Wouldn't that prohibit the independent distribution of handling the terminal? Couldn't the Central say, "We won't distribute anything except to certain agencies because the approaches are privately controlled?" A. The approaches would be in a measure privately controlled. The streets go through. Of course all the railroads have a pretty complete power in putting their terminals where they want.

Mr. Moss.—I see the force of what you say about the national interests, but the minute you put that idea out you run up against a certain narrow-minded body with interference from outsiders,

home rule instincts, and all that, and then run up against the objection that it is difficult to secure practical and effective interposition by federal authorities. I think we are more concerned here in the movement to prevent the local authorities temporarily in control of the city's interests from sacrificing those interests. I think we are more interested in stimulating an uninformed and flitting public sentiment upon the subject. I think we are more interested in disseminating the truth, particularly because it seems that the truth has been suppressed and distorted. I think we are more interested in determining whether it was right to relieve the Public Service Commission from all responsibility and ability to use its functions in this situation, and I ask you don't you, as a former Dock Commissioner—an officer of this city at the time in control so far as a single official has it of these interests—don't you think that the most important thing now is to work along the lines that I have suggested? A. I do, Mr. Chairman, and I think that the inducement is just about as compelling as it can be because this mistake is made clear, and if Mr. Bush creates a terminal in New Jersey the tendency for migration of capital and industry from New York to New Jersey will be very great indeed.

Mr. Moss.—I don't want you to answer this question unless you feel free to answer. If you were dock commissioner to-day, or if you were comptroller of the city of New York to-day, or if you were mayor of the city of New York to-day, would you not expect to be condemned by the enlightened sentiment of the community as soon as the community was able to form an opinion, wouldn't you expect to be condemned as unfaithful to your trust in allowing this inestimable privileges and rights of this city to be given to a monopoly in the way that is proposed? A. I would. These terminal facilities are the last great assets that the city has. Gas, electricity, that should have provided—and the passenger transportation that should have provided—revenues, have all been given away and that leaves these terminal facilities as the last asset and the only way the city can recoup the great expenditures it has made.

Mr. Moss.—Those facilities are so great, so easy of development, that the folly of the past might in large part be reversed if

a proper procedure were adopted now? A. Any time the city of New York would take advantage of its natural opportunities, no other city would be in the race with it, not even New Jersey, because it is not a difficult thing to bring the rails directly from New Jersey into New York. The wealth is here, the people are here, activity of enterprise is here and it is only because of those things that are here that we go as rapidly as we do. Once things begin to drift toward New Jersey where land is cheap —

Mr. Moss.— You don't have to answer this either, but when men are elected to office upon the ground that they are unusually intelligent, unusually well informed, that they have unusual public spirit and unusual conscience, when we find that those men are not dependable, it is pretty hard on the city and pretty hard for the city to stir up a city pride in a city which is thus betrayed. You needn't answer this if you don't want to. A. The vision of the city itself is very narrow and that must be borne in mind in regard to our city officials.

Mr. Moss.— If they had inspired leadership it would go pretty quick with the city of New York? A. The Merchants' Association two weeks ago, the Chamber of Commerce to-day, the Board of Trade a few weeks ago approved this plan, one after another, which really condemns the city to an insufficient development in the future. What can you expect poor officials to do?

Mr. Moss.— I have sometimes found that there was more vision and more convention among the people that haven't got much money than among the members of interlocking directorates, etc. This situation will not be saved by the commercial interests in New York. A. The Chamber of Commerce has acted to-day. They acted upon a report of a committee of which Irving Bush was the chairman, and what right had Irving Bush to be the chairman of a committee like this? A. Mr. Bush knows a good deal about that.

Mr. Moss.— Mr. Bush is interested in the Bush docks? A. I have never found a terminal agent who has been very enthusiastic about terminal development at any part of the port. I have a terminal myself in New Jersey and I know how that works.

Mr. Moss.—I guess that is all, Mr. Tomkins. A. I will leave you some reports that may be of interest.

Mr. Tomkins leaves the stand which is resumed by Mr. ROBIN, Mr. Joseph G. Robin. Having been sworn in executive session, Mr. Robin testifies as follows:

By Mr. Moss:

Q. Mr. Robin, you have been a man of large affairs in this city.

A. So they say. I was at one time, but modesty forbids—

Q. Now, I want to ask your experience and I am not going to limit you by the form of questions, but I understand that you were connected with the South Shore Traction Company. A. I had that honor, yes.

Q. A small railroad in Queens county, and I understand that you had some experiences in trying to get permission to run that railroad. Now, without limiting you by the form of questions, I want you to state the experiences of a man trying to get a franchise for a railroad in the city of New York. A. Just what are you trying to get at?

Q. Well, I want to get at your dealings with the public officials in the matter of trying to get the right to run that railroad. I'd like to have you start at the beginning of your contact with the public officials, state whether you had clear sailing or whether difficulties were put in your way and how they were overcome. Just make a history of it, if you please. I put it that way, Mr. Robin, because it goes without saying that I know you have had some experiences. I have had occasion to talk with officials about certain things and I have asked you and subpoenaed you to come here (I don't suppose you enjoy this public appearance) because I believe you are a truthful and intelligent witness and can enlighten this Committee upon the methods that have to be employed in order to get the right to run a railroad. A. Why, so far as the public officials are concerned, my only experience with them were those who have the power of granting franchises were the Tammany board under Mr. McClellan, and my experience there was most pleasant, in spite of the general impression that anything connected with Tammany must be crooked. I want to state that during the entire time that I had to do with the granting of the original South Shore Traction Company franchise, and its amend-

ments, never directly, indirectly, contingently or otherwise, was there a hint of graft or anything appertaining to graft or touching upon graft. The matter was one of public necessity. It was hotly opposed by those who constitute the New York branch of the owners of America —

Q. What do you mean by that? A. The gentlemen who hold the purse strings and buy things as they require them. We got our franchise purely on our merits. The opposition to the franchise is an entirely different story.

Q. Wait a minute. You say purely on your merits. I wish right here you would, in some graphic way, show us how your railroad was projected to run from what point to what point, whether it was in a straight line, whether it intersected other railroads, whether it had the particularly advantageous position as laid out. A. The situation was this: My associates and I had gotten control of the railroad situation on the south shore of Long Island, from Betrove to the sea line. There we had had a hotly contested fight with the Brooklyn Rapid Transit people who had formed a gentlemen's agreement, I think is the proper name for it, with the Pennsylvania Railroad to the effect that the Brooklyn Rapid Transit Co. was to have everything on the south shore of Long Island east of Babylon and that the Pennsylvania people were to have everything west of Babylon. Into that nicely adjusted situation I unfortunately hoped to stray and the consequences were not pleasant. We fought our way through there and then finding our way clear, after three or four years of battle, to the New York city line it occurred to us that the proper thing to do was to bring it into New York city itself, thereby opening the south shore of Long Island, which was then, as it is now, choked to death by the Long Island Railroad excessive rates to manufacturing industries. Growth down there has been the least of any part of this part of the country, because of the Long Island Railroad situation.

When we got into New York city, which meant getting onto the Queensboro boulevard, we found the situation thus: The Belmont interests, now the Interborough Rapid Transit Company's interests, and the Brooklyn Rapid Transit interests had a series of lines running on the basis of the old ferry connections in Manhattan, running in a general way you might call southwesterly and northeasterly direction.

Q. And by the ferries you mean — A. The 34th street ferry, especially, and also the Broadway ferry and the Grand street ferry. That was the basis of the altercation. The building of the Queensboro bridge, connecting up the Tompkins avenue and Hoffman boulevard, furnished a direct line of contact with the outlying freight center of New York city from 59th street to Jamaica, the line as straight as the arrow flies on this projected boulevard, and cutting these various profitable lines which were then running in a roundabout way.

We saw that situation and we also saw Queensboro beginning a twenty-four million dollar structure (I think that was the cost of it, it wasn't worth it but it cost that) which had not a single franchise, although the city had tried very hard to have the tracks laid necessary to put cars upon. In that situation we applied for our franchise and were immediately met by opposition by certain individuals who afterwards materialized as the Queensboro Bridge Celebration Outfit. Those included various patriots — one, I think, was William Williams and another one was — I mentioned the name to you the other day, what was it, Mr. Klien?

Mr. Klein.— Duggel? A. Duggel, I think, was one of them. Have you the list of names I had?

Mr. Klien.— I haven't it here.

Mr. Moss.— You mean W. H. Williams, president of the Queensboro Corporation?

Senator Lawson— Is that the present commissioner of water, gas and electricity? A. I can't carry those names, it is so long ago. There is one man especially whose name I want to recall, a man whose name you looked up and asked me about.

Mr. Klien.— Stuard Hirschman? A. Yes, Stuard Hirschman. We found ourselves in a franchise fight. I saw no reason why we should contend with local forces that were so anxious to have local tracks upon that bridge, and suggested that we have a conference and get together, there was enough glory for all of us in the situation and I suggested that we get together; so we had the meeting at my office one day, at which one Julius _____, I believe now United States judge, represented some of the interests and there were some more of these gentlemen I have just named, and

we threshed it out to and fro. I said, "Come in and take any part you wish and we will build this road together." It then developed that the patriots were not anxious to have the road built very quickly. It seemed that they were interested in real estate and the right to cross the bridge which the Queensboro Corporation held; they wished to have a franchise which did not require the building of the road out very quickly. They wished to have it built slowly. I believe the rate of progress was to be the rate in which they sold the property that they owned. My plan and the plan of my associates was to build through immediately, which would open large amounts of railroads not owned by those who belonged to the select Queensboro Corporation, so we didn't agree.

That had no influence upon the then Board of Estimate and Apportionment. They didn't see anything particularly interesting about the Queensboro Corporation, so we got our franchise. With our franchise in our hands we thought —

Q. That was all in the McClellan administration? A. That was all in the McClellan administration, and I want to repeat that there has been considerable in the press about the affair to the effect that there was some graft, something wrong about that franchise. I'll cheerfully take a jail sentence, 20 years in state's prison, if some one can show that some man got, expected to get, a single dollar, a share of stock or anything representing value in that administration for the issue of that franchise or for its amendment, either directly, indirectly, contingently or otherwise.

Senator Thompson.—The exercise of that franchise came in contact with other roads, didn't it? A. It cut the heart out of New York & Queens. New York & Queens was a losing proposition when August Belmont bought it and when he removed from the Interborough —

Mr. Moss.—Mr. Belmont swore here yesterday that when he bought that Queens county railroad he bought it for the Interborough and only held it for their agents. A. Did the Interborough know it?

Q. I have not asked him. A. I doubt if you will find an entry in the minutes. I know something about the transaction.

I want to say now, that after they had gotten the railroad away from my hands it was built, over and above the professional

experts, people of high reputation whose judgment was that it wouldn't pay, that it was one of Robin's wild dreams. It has paid from the first moment of its operation. I think it now pays 12 per cent per annum but I haven't — it is in good hands now.

Q. You have the comfort of having had the idea. A. It is in the hands of people who are entitled to hold those things. Now, after we got our franchise we went to the Public Service Commission — I remember the morning the mayor signed it. We hustled right over to the Tribune Building and asked them to please pass it so we could go on and build. It seemed easy to build. Here was a bridge tenantless. The corporations wouldn't apply for a franchise unless the city first bought the Steinway tunnel for twelve million dollars from Mr. Belmont and his association, but there we found a man named Basset, another patriot. Basset couldn't see it at all. He wanted to think it over. I think he took the franchise to Brooklyn with him. It is the proper place to go with it. In the course of a little while he got the idea that the franchise couldn't be approved.

Q. The Public Service Commission vetoed the franchise that had been granted by the city? A. Yes, sir; in 1909, about June or July. They had never done it before and haven't done it afterwards. Of course, we certioraried.

In the meantime Mr. McClellan sent for the counsel and said, "I want this bridge open. What can you do to help us?" "Will do anything we can to help." He said, "The city can't buy cars to operate there; I doubt if the city has authority to do anything, but can you give us some cars and we will operate these cars?" Counsel said, "We will try it and operate it for a few weeks." In about 36 hours we bought ten cars. The city immediately started operation of those cars and made a profit of \$15,000.

Q. Did you ever make any profit on those cars? A. After we got them back, yes, but it took us some time. Mark you, up to this time the New York & Queens County, the Belmont Company, didn't want any franchise on Queensboro bridge; it wasn't a nice bridge, a bad bridge to go upon, but at the first meeting after, as I recall it, these cars owned by us and operated by the city started rolling merrily along; the New York & Queens County or the I. R. T. (but I think it was Robinson) were there asking for a

special license to operate immediately, pending the application for a franchise, which, of course, takes a couple of months to put through. And they were very anxious. The public convenience, the dear public, had to have these cars there immediately and it was a shame to deprive them of the New York & Queens County cars.

And while there was absolutely no provision of law for a license, we saw no reason to oppose it and said, "Sure, go ahead; the more cars the more business" and as I recall, the Board of Estimate issued them a license. They applied for a franchise forthwith and the Queensboro bridge started in operation without the city paying Mr. Belmont twelve million dollars for the Steinway tunnel, which was the price of admission.

I had a conversation with some of the officials and told them, "Here, we have had trouble in this matter. This litigation of a franchise hurts us. I think you ought to improve our franchise." We had a very serious discussion and I want to say again there wasn't a man around that table who suggested anything about the interests of the city. Mr. Metz, Mr. McGowan, the mayor and all the rest of them, and they said, "Yes, you are right. You are carrying our fight on for us and we will amend your franchise and make it easy for you. You have had a hard time." In the meantime there was a man named Harry B. Nicolls, who had remarked to one of my associates after the franchise was passed, that he thought his work in the matter was worth \$25,000. When my man told me he had said it, I said, "The man's joking. Harry Nicolls can't mean that possibly. Go down and see him." I went down to see Nicolls and saw him alone, and said, "What is this about \$25,000?" "Why," he said, "don't you think that is worth it?" Of course, I am repeating the substance of the conversation which is seven years old. I said, "You don't mean you want any fee. That is a joke, isn't it?" He said, "You see how much of a joke it is." The long and short of it was that unless I came across with \$25,000 we'd have a hard time of it. I didn't come across with the \$25,000 and I had a hard time of it. He is in charge of the bureau of franchise — engineer in charge of that.

Gentlemen, the minutes of the Board of Estimate and Apportionment from that day up to the time I was forced out of the

South Shore Traction Company is one series of vile attacks against this corporation. The newspapers became full of it, so that when it came time to advertise the changes in our franchise, as the administration had agreed to make them, he whose duty it was, refused to have a thing to do with it, wouldn't draw a single paper. It is a highly technical course of procedure known only to that bureau and we had to draw up our own papers and find out the course of procedure, which was very difficult and throughout this fight this man Nicolls was there with his venom and his pen, with a continuous and constant series of attacks upon this corporation, filling, I believe, some 600 pages of the minutes of the Board of Estimate and Apportionment, all about this poor, 12-mile railroad.

He hadn't much success with the McClellan administration but the first of January, 1910, things changed. John Purroy Mitchel came in as president of the board of aldermen. Just what John Purroy Mitchel's connection with the Queensboro Corporation is. I don't know; what I have heard is hearsay. I know that John Purroy was right there and what Nicolls didn't do, John Purroy did, and he has a fine graft.

We had to choose our route in part of the old village of Jamaica. We had gotten alternate routes. We couldn't make our selection and we applied for an extension which was promptly pigeon-holed and then it was widely advertised that the South Shore had lost its franchise because it had failed to make its selection of route, while John Purroy was sitting on the application for extension.

That kept on throughout the year 1910. We made our application for permission to build on Tompkins avenue and Hoffman boulevard, in writing, and we couldn't get it. The South Shore road wasn't built in 1909 and '10 and '11 and '12 because the city wouldn't let it.

Q. The bridge was idle? A. Oh, the bridge operation was going on by the Queensboro.

Q. For two years? A. No, the bridge operation commenced immediately.

Q. I understand. A. Meanwhile, I understand the Queensboro Corporation was meeting with considerable success in selling its real estate immediately adjoining the bridge, but the people beyond Elmhurst and beyond Woodside — they had nothing —

Senator Thompson.—What was the Queensboro Corporation?
 A. Why, I understand it is a corporation in the securities of which Mr. John Purroy Mitchel took an interest at one time, didn't he?

Q. I understand he was interested in the securities in some form of other. A. I don't know exactly whether as salesman or advance agent.

Senator Lawson.—A real estate corporation? A. Yes. Which immediately adjoins the Queensboro bridge.

Mr. Moss.—It is that extension where the spur of the elevated railroad — the new elevated railroad — and the dual system runs.

Senator Thompson.—Who is president?

Mr. Klein.—Its president to-day is Edwin F. Dugglin, a friend of the Mayor's — was at that time, I don't think he is especially friendly with him now, though.

Senator Thompson.—In connection with the railroad operation, has it got an interlocking directorate or anything connected with the railroad?

Witness: A little further on.

Well, the struggle went on with these constant attacks appearing in the newspapers; the Board of Estimate and Apportionment minutes individually advertised that the South Shore had disposed of its struggling 12-mile road, which had become very wicked for some reason or other and was subject to the wrath of all righteous gentlemen. Another patriot was a man named Kuehne. Kuehne didn't like me and I don't blame him. I had had some things to do with Kuehne before he had organized a corporation known as the Bankers Money Order Association and sold \$70,000 worth of stock throughout the country and agreed to take the other \$30,000 for himself. When I got control of the corporation he didn't want to put up his part so we sued him and got judgment on him. It was later reversed, though. And Percy Kuehne turns up as treasurer of the Citizen's Union.

If you gentlemen would like to look at page 114 of the proceedings of the American Bankers Association of 1904, the last two paragraphs, you will see how one banker described Percy Keuhne in the open meeting.

Senator Thompson.—Just a minute. I want to put on the record this: We sent a subpoena to Mr. Gillespie and he is out of town and won't return until next week. What we want to find out—I guess Mr. Quackenbush knows that there has been no settlement on this contract with Gillespie—it is not the same as the last day Gillespie was on the stand.

Mr. Quackenbush.—That is correct. I wouldn't say the conditions are just the same because the usual ordinary payments have been going on, but no final adjustment has been made.

Senator Thompson.—And the contractors' work on the Second, Third and Ninth Avenue line was complete the first of May or prior thereto?

Mr. Quackenbush.—No, that time the contractors stopped their work, and whatever was left unfinished has been taken over by our own organization.

Senator Thompson.—Now, Mr. Quackenbush, one day you said that some day you would make a statement for our record here. I want to say that we would be glad to have you make it here, and if you want to make a statement and send to us we will put it on the record.

Mr. Quackenbush.—That was more or less pleasantry. I want to be of assistance to the Committee in any way I can, and possibly when you come to make up your report I might be of use to you. As a whole I have nothing to offer, but I suppose that in regard to many of the transactions that have been the subject of investigation I have some knowledge. I certainly have some ideas on the subject but I have not reflected upon them carefully enough to warrant my making a statement of a serious character for the record at this moment. I am quite sure if I'd undertake to do it I would wander and get more details than necessary. At the same time, I am quite willing between now and the time you send your report to the Legislature, to answer any questions that you want to have upon record. Upon reflection, if I should think I ought to add anything in the way of a voluntary statement, I'd be very glad to do that. If there is anything, on looking over your record, you want information about, the same access will be afforded to you in the future that has been in the past.

Senator Thompson.— I just want to put on the record that we don't want any mistake about the situation that the Committee agrees with everything that Mr. Quackenbush might have said or every argument he might have advanced, nor we don't violently disagree with everything that he wanted the Committee to believe but I do want to express to Mr. Quackenbush the things of this Committee for the uniform courtesy and acquiescence in all our requests and to say we think you have carried out the representation of your client in an ethical, lawyer-like way so as to unusually impress the Committee with your ability. We have seen a lot of Mr. Quackenbush.

Mr. Moss.— I am glad you said that, Mr. Chairman.

Mr. Robin.— That brings us down to 1910 when I had practically arranged to go on to build the road in spite of these various delays and attacks in the newspapers by the Nicolls-Mitchel outfit, the Citizens' Union mouthpiece, and then all of a sudden I found that the Public Service Commission —

Mr. Moss.— Whatever was discussed in the executive session is on the record in executive session and there is no need of repeating it.

Mr. Robin.— — and when those events occurred, we found there appeared upon the scene to carry out the orders, one Marvin Scudder, who I understand, came straight into the Queensboro Bridge Corporation, curiously enough, doing the work at the same time of one J. Purroy Mitchel, then president of the board of aldermen, and also was representing and making a last, final and successful attack upon the South Shore's corporate existence. That was another hunt for graft. Just why there should have been a hunt for graft where there was no graft and when it was so entirely obvious there was no graft, I don't know, but there was a lot of tom-toming and beating of drums by a lot of gentlemen who ought to have stayed home to look for graft. These attacks upon the South Shore continued until nally I was eliminated from the situation, and the people of eminent respectability and large means took hold of it and organized another corporation and took hold of the franchise and they were enabled to build the road very quickly.

Mr. Moss.— The same road? A. The same road and the same sort of route, but it was in the right sort of hands. No more trouble from the franchise bureau, no more trouble from the 'Citizens' Union, no more trouble with anybody. That wicked road got built.

Q. It hasn't broken the gentlemen's agreement? A. It is still well within the bounds. The main road was built through and I believe is doing very well, in fact, I think it is one of the four roads in this state that has ever paid from the first day of its operation.

You asked me, Mr. Moss, before this hearing opened, to give my conclusion as to what its operation is under the Public Service Commissions Law. I was present at a meeting in Albany when the predecessor of the Public Service Commission, the Electric Corporation Committee, was first invented by two very able corporation attorneys. We had then come to that stage of public life when the dogma of "The people be damned" was being eliminated and a new creed was adopted, "People be flimflamed." They had to have certain powers for certain corporations which I was interested in, so they invented a regular commission which was to control these corporations, to represent the people, and to go after these wicked electric corporations. Incidentally it gave them all the powers they wanted.

Q. What is that? You mean to say a regulatory body? A. The act creating the power must hope to control the powers; it couldn't get by direct legislation.

Q. Was it for the public benefit? A. As a matter of fact it was, but the public didn't know it.

Then came the Public Service Commission, another wonderful creation by an eminent gentleman. The Public Service Commission came into existence on July 1, 1907. Outside of the roads which I projected and built or which were built after my plans, how many miles of street railroad have been built in this state in those nine years which have elapsed since this Public Service Commission came into force; except those that were then being built under the old railroad certificates or which I personally projected, including the Manhattan and Queens? You may find ten miles; I doubt it. Who is going to build railroads? If railroads

are to be built by private capital, who is going to build them on the basis laid out in the Public Service Commissioner's Law as interpreted by this Commission? It is folly, idiocy. Gentlemen who own the railroads now have all they want, but newcomers who can get capital on a 5 per cent basis to speculate in railroads, or a 7 per cent or a 12 per cent — you can't make James J. Hill's on that basis.

The Public Service Commission in its effect, as worked out, has simply been to create a bulwark around old corporations and whenever you look in any direction, there is absolutely nothing doing in the way of new street railroad construction.

In my mind — I may be dead wrong, but I have had nine years' experience of the state behind me — I am not attacking any member of the Public Service Commission — they have been making their own record, some are honest, some are human.

Q. What do you mean by that? You are a man of experience. you have come in contact —

Senator Lawson.— That is pretty well put; let's let it stand just as he said. A. Why, Mr. Moss, my first large experience in Public Service affairs was in the Company, a phase of which had to do with patriots and local statesmen you had to do with a little while ago in Niagara Falls.

Q. You mean some of those Lockport people? A. You had to deal with them.

Q. The price of admission is so much. You have seen one phase of it. Senator Thompson and I first met in that matter and disagreed from time to time, and we were both right and both wrong, but we had to deal with local citizens of eminent respectability and public worth. I personally took the position that neither my personal condition or my birth or breeding or desires incline me to graft or to handling graft, and I refused to have anything to do with the franchise situation. I was handled by two lawyers, both of whom, thank God, are dead now. A. I think it handled 106 applications.

Q. Franchise applications? A. Yes, in various ways, not separate applications, but 106 separate transactions.

Q. Along the route, there, of the power? A. Of the power, yes. They told me not one got through excepting they paid for it.

Q. You were successful out there in the matters of these two lawyers — A. I went into the South Shore enterprise at the solicitation of my friends. I said, "We are going to do something which is necessary with no graft," and so far as I am concerned, my books and records and check books will show not a dollar of graft — and we failed.

Q. You failed. A. Now, you asked me, Mr. Moss, before we started in, to give you my conclusion. It is simply this: Public franchises are not for private exploitation. I have seen it from the point of view of the owner of property, of the banker, of the successful man, the unsuccessful man, the public franchises belong to the public. When you elect John Doe, be he grocery man, delicatessen store-keeper, a lawyer, a public officer, if he is poor and has a public franchise to give away, in eight cases out of ten he will sell it. He may get it in money, in social preferment, he may get it in laudatory articles in the Sun or the Times (if that is worth anything, God knows, especially the Sun)—

Q. I'd rather have them pitch into me. A. I think it is a compliment.

Q. I say that because I get more of those than I do of the other kind from the Sun. A. In evidence of the fact that my criminal history — in fact, the New York Sun always pitches into me. I am proud of its enmity although I do recall —

Q. Mr. Robin, let's be serious for a minute. You have spoken of your criminal history. I know something of that; I had to deal with you and I learned to trust your word. I learned to rely upon your word. You never fooled me once. You never said anything to me that you didn't make good — you told me some wonderful things, but everything you told me was proved upon the records and for that reason when your case came up in Court, I stood there rather in opposition to my chief, insisting that you should not be sent to jail. It is fair to you to say here now that you went to jail because you plead guilty to an indictment. You claimed you plead guilty under certain circumstances. The gentleman who took your plea of guilty, who was then district attorney, has pardoned you. A. He wrote offering a pardon if I would apply for it. After some hesitation I applied for it and got it on the same day.

Q. The point of it is that the gentleman who took your plea, pardoned you, so you stand to-day in the full enjoyment of your rights as a citizen under the act of the man now governor. A. Who knew pretty well what the facts of the case were.

Q. I do that merely in justice to the witness. A. As I recall you made a report that I was not guilty, so they sentenced me.

Q. It wasn't exactly that, but I did report that I had come to the conclusion that you were not guilty of any moral wrong. A. Exactly. I recall that I asked to withdraw my plea and it was refused.

Q. That was a report four or five hundred pages long which was written after all evidences of proof were given, and was made at the request of the district attorney. I think it was a beautiful thing to put into court. A. I think that covers fairly the situation as to this question of the Public Service Commission. I think if you gentlemen are going to accomplish anything it is better to go back to the old free and open days of the railroad. When you have got your securities in any amount you wish and the people took their chances — you have got to be an individualist and let people take care of themselves or be a socialist. I am not an ist of any kind but this limiting of securities and operations on the one hand and not furnishing the funds on the other, means simply this; that there is not a chance on earth of any further growth in this State under the present Public Service Commissions Law. And unless you gentlemen do something to do away with it there will be no railroads built here, except little spurs when they see it is worth while. The growth of this State is stopped.

Q. Is that the reason the growth of Long Island is held back? A. Absolutely. The south shore of Long Island where I projected the rest of my railroad is one of the richest fields for a trolley road in this country. When I was asked at one time in 1910 to procure a report upon the projected road for the purpose of financing it — I was asked to get a high-class report — the opinion was that J. G. White & Company was high-class. I knew what they were and what their reports meant. However, I said, "I will try them out." I went to them and told them to look over this plat, but asked them to let me know what the report was going to be. When they made a preliminary report, they said, "Mr. Robin, drop the

city end, the country is the rich thing." In other words, drop your opposition to August Belmont, and we will give you what you want.

Well, at one time I almost believed them but history has proven to the contrary. To take the other end of it there at Long Island — rates are just gone up last week — no way out — no way of getting into New York City excepting by an exorbitant rate and no one dares go in there from New York City and buck into this opposition. There is this wonderful territory just teeming with possibilities, dead, absolutely tied into a knot and there won't be a road built there unless the old South Shore rights are resumed.

Q. You think there will be nothing done except the Long Island Railroad choses to do it? A. Either have open competition or put it in the hands of the government. If you are going to protect, protect. Take it and keep it and run it as a public enterprise, but to say that private capital is to come in and then to be governed by a political body and not to have a chance to make its legitimate earnings, it is impossible not to say stupid. It reminds me of your friend, John Clark, who said the proper way to spell master was with the M left off. They don't realize that they are being fooled, flimflamed. They think they have got the Public Service Commission under the law the intent of which is to stop further competition. That is all. Think it over. You gentlemen here, if you had money to invest in a proposed railroad which is always a risk, on the basis of 7 per cent or 6 per cent, of course you wouldn't invest there.

Mr. Shuster.— In the days before the Commission we had what was known as the system of bonus stock. A. I know, but bonus stock means nothing. In bonus stock I think they allow something like twelve and a half per cent on what their engineers think it costs. Their engineers forget. I am out of the business; I am not going back into it; I am not going to have a thing to do with it. I have no axe to grind; I have no railroads to finance. You know what the facts are — you want the public to know.

Mr. Shuster.— That is because the franchise is necessary for the railroad. A. There was a peculiar situation, a bridge there which was not being used on account of the disagreement between the established interests and the powers of the world. But the hard-

est thing in the world to convince people of is the obvious. They have the idea that as soon as a man is elected to a public office his interest is changed. That is the wrong idea. He wants the same as before. He wants his money if he can get it.

Mr. Shuster.—Have you been an extensive operator of franchise properties? A. In connection only with the Niagara matter, which was an expensive matter, involving fourteen or fifteen million dollars, and with these trolleys and other small interests of various kinds. I see nothing in this situation but a complete change. Take over the entire railroad situation, disqualify its employees from voting for their immediate superiors, and you may thereby get a decent working arrangement.

Mr. Shuster.—You don't consider that practical to-day in America? A. If the people had sense enough to get away from slogans and waving the flag and get down to basic propositions, yes. I think the idea of a man who is in the civil service voting for his immediate superior is idiocy.

Senator Lawson.—Would you take his vote away from him? A. Yes.

Senator Lawson.—The constitution would have to be changed. A. How else would you go into large operations?

Mr. Shuster.—All these things are conditions that exist and cannot be changed readily. A. That is my own idea of the situation; it is probably wrong.

Mr. Shuster.—You have stated here and it is a fact that practically no railroad building has occurred since the enactment of the Public Service Commission in the State of New York, within the State. That to my mind, at least, is a serious matter. A. It is a very serious matter.

Mr. Shuster.—There is a need for more trolley lines in many sections of the State and yet we don't seem to be able to interest capital in the proposition. A. You can't.

Mr. Shuster.—What is possible in the way of a suggestion, then? A. I can only make this suggestion; go back on the old open, free competition. If you are going to do away with this entire system of protection, don't regulate as to methods of opera-

tion but get back to the old, open, free competition or else take it all over and have the State build, but this hybrid that you have got now is a fashion you're following that gets nowhere.

Mr. Shuster.—The theory by which they do that is that the amount of capital issued affects the question of rate and the question of operation. A. That is a very tenuous theory; the fact of the matter is that there is always a theory for every construction, of course, but the theory is so faint if the proposition is overcapitalized it will go into receivership. If you have competition and one road does not give you enough service some one else will. If private competition is proper, let us have private competition but this private competition is like special legislation — when the right fellow wants something he gets it. They go to the Legislature and have a special act and they issue all the securities they want. If someone wants to build something somewhere they will get a special way through to get their particular thing out. They always have and always will.

Senator Lawson.—They don't do that now because the Legislature has delegated those particular powers to the Public Service Commission. A. But if a certain gentleman wanted to build this private trolley line from X to Z —

Senator Lawson.—I doubt it, Mr. Robin, because I want to say to you now that the Legislature has not been prone to interfere with the workings of the Public Service Commission at all in any possible way. The Legislature has created a Public Service Commission to do certain things and it has tried to give the Public Service Commission the widest latitude in the promotion and settlement of rate cases, promotion and settlement of franchise matters and it has not up to this time seen fit to investigate the action of the Commission created in reference to the powers it had delegated to it. A. You have investigated and found its powers and see the results of the good. I mean, have you gotten results? Have you more lines? Have you as many miles per year of new road built since July 1, 1911? Or have you found it has been absolutely dead — doing nothing? Which is it?

Mr. Shuster.—If there has been nothing doing for seven years, there is something wrong. But natural conditions may have had something to do with it.

Senator Lawson.— This idea of permitting any company to come in and issue securities without regard to control is going to lead us back to the old times where they just simply issued thousands of dollars worth of stock and unsuspecting public bought up the issue and the result was they got into the hands of a receiver after a while and the public lost money. A. The question that is more important —

Senator Lawson.— The idea is that the Legislature created the Public Service Commission to stand as a bulwark for the interests of the people. A. Has it done so?

Senator Lawson.— I am very sorry to say not in total. It has not.

Mr. J. Frank Smith.— In order to keep your record clear on the statement you made of the inclination of the Legislature, we have examined here for two days where the State of New York took the power of control away from the Public Service Commission in regard to this water front —

Senator Lawson.— They had to do that because of shortcomings of the Public Service Commission.

Mr. Moss.— Had the shortcomings of the Public Service Commission appeared in 1911 when those acts were passed?

Senator Lawson.— There was some question there as to the right of the Public Service Commission having power over those things.

Mr. J. Frank Smith.— No, not at all.

Mr. Moss.— Just a moment.

Senator Thompson.— So far as that is concerned, they introduced the act one way and amended it to cover the Public Service Commission and amended it to take the Public Service Commission out and no one seemed to know whether they wanted the Public Service Commission in or out.

Mr. J. Frank Smith.— The point, Mr. Chairman, was this: That inadvertently it was suggested to Mr. Robin, the witness, that it was the inclination of the Legislature to leave these things in the hands of the Public Service Commission as against the witness's statement that if the right man wanted it he'd get it over

the head of the Public Service Commission and I called his attention to the particular instance where it was obtained and privileges were obtained over the head of the Commission. A. Naturally, when the proper people want things they get them.

Senator Lawson.—That might have been true of the Legislature at this time, but it has been my experience in the Legislature that they have not been at all desirous of overstepping the Public Service Commission in its — A. Pardon, me, Senator. Do you recall how the Board of Aldermen hoped to lose its right of granting franchises in this city? It was because the Pennsylvania Railroad couldn't get what they wanted so there was a change. I don't say it was a change for the better or for the worse. There was a change, and there will be changes from time to time; when the proper people — the gentlemen I have designated as the owners of America — need things they get them. If you are going to have private ownership, let's have private ownership in competition, wide open, and let the buyer beware and take care of himself. If you are going to have public control, let's have public control but as you have in you have tied things into a knot and there is no possible way of getting over or under the present conditions.

Senator Lawson.—We have been trying in this Committee for a year and a half to untangle this knot and to present to the Legislature a tangible report. I want to ask you about this right here; Long Island has a peculiar topography. She has a railroad running down the south side, but she has no trolley competition. Now do I understand that your South Side Railroad had a franchise to run a trolley line beyond Jamaica? Did your road apply to the Public Service Commission for a certificate of assessment? A. We had our certificate. We had the good, old bond issue. That is why they didn't like us. We had one of those old-time, wide-open issues that you know you took your chances with.

Senator Lawson.—And you were up against the powers of the Long Island Railroad to prevent you building that railroad. · A. The people who built this old South Shore line from Manhattan out to Jamaica, while they are very wealthy are not in the New York crowd. They have built that road, I think it is three years

now, and they haven't gotten permission to issue a single security yet.

Senator Lawson.—Is that trolley road out to Freeport? A. No, out to Jamaica.

Senator Lawson.—What road is that? A. Manhattan and Queens.

Mr. J. Frank Smith.—The Public Service Commission's control of securities interferes very little with present railroad owners. A. Not present ownership, no.

Mr. J. Frank Smith.—But it absolutely precludes new roads? A. Absolutely. Think of the experience of those people. They put in a million and a half or something of that kind, built the road and said to the Public Service Commission, "Here it is all built, paid for out of our own pockets, didn't have to borrow anything. Now give us some securities." And they are still waiting.

Mr. Moss.—Did you have anything to do with Stuard Hirschman? A. He was one of the Queensboro Bridge outfit. He was present at this conference at my office and then he called me up one day just before the franchise was to go through and said he was at Tammany Hall and said he wanted some money or the franchise wouldn't go through. I said I didn't believe he belonged in Tammany Hall.

Mr. Moss.—Do you know who Stuard Hirschman is? A. I understand he is a friend of Mr. Mitchel.

By Mr. Moss:

Q. You have spoken about the Niagara business and about — A. I don't like to —

Q. The Committee is a little interested in this Lockport situation. When you came to the city of Lockport you found nine gentlemen were in a corporation that had been created by the State of New Jersey. A. That was the local Citizens' Union of Lockport.

Q. The situation was this: Here were nine gentlemen, Richmond and Young and Herrick and Hickey — Now it appears that while they had an ordinary looking franchise under an act of the Legislature, the Legislature when it granted that franchise was

told by the assemblyman who introduced it that it was not intended for the benefit of the gentlemen who were incorporated, that they were public spirited citizens and that not one of them would ever accept any profit from it. You didn't know that of course? A. Oh, yes, I did.

Q. They told that to you? A. Yes, the public spirited citizens. The Chamber of Commerce has convicted them of being the most prominent and respectable of the citizens. When I bought that franchise from them they were still acting as trustees for the city of Lockport, but after a while they began to state that they had private needs that had to be satisfied. At that time they had put in a million dollars for the enterprise and their wishes were very important. You see if it didn't satisfy their needs the public spirit would be against us. They would denounce us as being pirates.

Q. You'd be despoilers of Niagara Falls if you did not satisfy their needs. A. The people we were bucking up against were the Niagara people, and they didn't like our coming in there to sell power at \$18.00 a horsepower when they were getting \$30.00 and \$40.00 for it. So one morning the New York Tribune, which was then owned by D. O. Mills, came out with a very terrible story that Niagara Falls was in danger and resolutions were adopted to prevent such a terrible thing, because then there would be no place for wedding couples to go.

The eminent powers said it was folly; it was a young man's vaunting ambition not loaded down with common sense and experience. I was then younger than I am now and didn't have as much experience. They said seventeen miles is far enough to carry power. That is as far as they were carrying it — to Buffalo. I don't know what the danger was to Niagara Falls.

We passed our bill through one year and the governor vetoed it and the second year we got our rights. While the Citizens' Union was pounding the private Legislature, this public spirited legislation went through. We ran the line down to Syracuse and the power of Niagara is to-day the same as —

Mr. Moss.— Without drying up the Falls. Your dream is all right, only somebody else has got the use of it. A. It is all right now. Before it was all right I had to sell out. In 1905 a syndi-

cate was formed and bought me out. That settled it. It became a fine enterprise, has honest and conscientious management, honorable gentlemen and public spirited men, securities were good, everything was perfectly O. K.

Q. What I want to know is this: These nine gentlemen who became corporators because they were the select, hightoned citizens of Lockport, they were not bound by any agreement? A. I understood they were trustees of the city of Lockport.

Q. Only morally. A. They really did have the individual right and there was not a paper in existence that showed they were trustees, still everybody in Lockport knew that they were trustees.

Q. Now, there were nine gentlemen who sold that stock. What I want to know (if I don't get the details of it you take care of it, Brother Smith), I want to know did those gentlemen get paid? A. They did.

Q. Just follow me please. Was the money which they received paid in lump or paid in a way that they all understood or was there a separate arrangement made with each man? A. As far as I know — I never heard it until this session — as I recall it there were two things. First, a general contract giving them a certain amount of common stock, a certain amount of bonds and a certain amount of cash. Then each one of them came along, separately, and showed good and substantial reasons why he, because of his interest in the community, ought to have been elected an officer, and their arguments were very persuasive, so that was taken care of by bringing an election and mostly by bringing — I think I can find some of the correspondence in the papers that will show what those patriots got. They were leading citizens. Each one had a separate treatment, I am pretty sure. I think Richmond got a little extra.

Q. You do? Richmond says he got less than anybody else. A. I don't think so.

Q. He retired from business shortly after. A. I think he got more. He is a very important man. You see he always stood up and told them what bad people we were. He is a very important man and Hickey was secretary of the Chamber of Commerce, wasn't he?

Mr. J. Frank Smith.—At the time that you came to the city of Lockport, the company whose franchise you afterwards took, was represented by a capitalization of \$1,000.00. I think that was right. There were ten men—ten shares. A. Yes, that is my recollection. G. T. Berger was a lawyer, had a share of stock. I. H. Babcock was another one.

Q. And you as a promoter made some arrangement with these incorporators, acting at trustees for the city of Lockport? A. That was my understanding at that time.

Q. Now at that time did they get stock? A. No, they got promises.

Q. And the stock was not issued until 1905 or 1906? A. Yes.

Q. At the time that the stock was issued in 1905 or 1906, that was when the capitalization was increased to ten million dollars and there was a capital issue— A. Five million of preferred and five million of common and two million of bonds and some of them got bonds and some got stock. It was in contract form. The agreement was in contract form as to what they were to get.

Q. But that wasn't the published contract? A. There was a contract capable of being published or cried from the house tops as to what the company was to do. One of the things was that we were to give a contract for power to Lockport, I think it was \$14.00 or \$16.00 a horsepower and when I negotiated that matter I understood it was to be handled without profit.

Q. That is, the quantity of power was a maximum of twenty horsepower at a price of \$16.00, and that contract also contained a provision that there was to be a rebate. A. I don't recall that.

Q. Did that pass into the hands of the other company?

Senator Lawson.—\$3,000.00 per annum minimum and \$10,000.00 maximum in addition to this contract for 20,000 horsepower. A. There was a franchise made.

Q. That was to be in perpetuity? A. I understood at that time that this was the price paid for the franchise and it was to be a thing to bring about Lockport's improvement.

Q. It was to be handled as an advertising medium? A. Without profit. A. You remember at that time we abandoned the idea of building the canal through from Niagara Falls and uncovered the fact that we were going to use the Ontario Company's power.

Mr. J. Frank Smith.—Mr. Robin, as a matter of common fairness, as a citizen of Lockport, to our very eminent gentlemen and as a matter of fairness to the eminent and honest gentlemen who do live in the city of Lockport, I would like to have you put on the record now your best recollection of the amounts of stock and bonds,— A. Please don't ask me; I can't do it; it is too long ago. I think there was something like two or three hundred thousand dollars for stock.

Mr. J. Frank Smith.—Make your best guess with the agreement to furnish the memorandum. A. I will furnish whatever I can find. The contract was with the Iroquois Construction Company. It was a one hundred thousand dollar corporation which we organized, which I controlled and which took over these contracts and I was secretary, I think, and treasurer of that company. Mr. Cassius M. Weeker was president and Mr. Westinghouse was a director. I think I have copies or duplicates of all these things, or most of them. My recollection is that there was about two or three hundred thousand dollars of securities. It is very vague in my mind, it is thirteen years ago.

Mr. J. Frank Smith.—I think it is only fair to get as near as you can recollect. A. I knew there was a suit by E. S. Burns against the Niagara, Lockport, & Ontario Power Company. Burns had to do with this thing and he brought some suit against King, I think and against a company in which I was one of the defendants, nominally, and I think you may find those papers. He had something to do with that and then I think Mrs. King, after Mr. King's death, brought some suit. It is so long ago, and after I was out—in 1905. Why don't you see Francis B. Greene, who succeeded me in that company? He has all the records. I have his receipt for them.

Mr. Moss.—You have his receipt? A. Yes.

Mr. J. Frank Smith.—His present association with the company would probably disincline him to discuss this particular phase of the proposition. The point I am trying to get at is this; to make it clear on the record at the single time here that it is your best recollection as to the amount of cash and securities. Now,

you have given — A. I am very certain that it was a similar amount of bonds and about three hundred thousand dollars worth of stock, which is valuable, because I had some of it which cost me nothing and was valuable afterwards. I think something like thirty or forty or fifty thousand dollars, two or three hundred thousand dollars worth of stock and perhaps sixty or seventy thousand dollars worth of bonds. They were distributed in unequal amounts.

Mr. Moss.— Is there anything more, Mr. Robin?

Mr. Crummey.— Might I ask the Chairman to have spread on the record either the whole record before the Commission on the company's application for the issuance of securities or at least the opinion of the Commission denying it application for the issuance of securities?

Senator Thompson.— I have sent for the record.

Mr. Robin.— I want to state on the record I have not a dollar's worth of interest direct, indirect, contingent or otherwise in the Queens Traction Corporation. They are no friends of mine, don't know them and don't want to know them.

Mr. J. Frank Smith.— We met them last fall.

Senator Thompson.— Case No. 1310. It seems to be an investigation into the conditions of the South Shore Traction Company ordered by the Public Service Commission evidently on their own motion. Now, that order directs a hearing on June 19, 1911, and the very first paper is dated June 19, 1911, so the order must have been made before that. The report is made by Marvin Scudder, dated June 19, 1911, which he must have made prior to its date. There is nothing in the report to show when he started to prepare the report except with the possible exception that it might be December 9, 1910. He looked to show that the construction company had been the owner of certain stock from 1907 up to December 9, 1910, which would indicate that was the date Scudder started to make his investigation. Then his report is made on the 19th of June, 1911, and on that date an order is made by the chairman that the investigation is ordered. The chairman designated Commissioner Maltbie to conduct the hearing.

Mr. Crummey.—What I'd like to have go into the record is the opinion of the Commission denying setting forth reason why application for the issuance of these securities was denied.

Mr. J. Frank Smith.—If it was not before the Committee now, I'd ask leave to have it spread on the record before the Commission.

Mr. WILLIAM C. ORMOND takes the stand and, having been duly sworn, testifies as follows:

By Mr. Moss:

Q. You are chairman of the board of assessors of the city of New York and inquiry was made by Mr. Morse, so he reports to us, in relation to a report made by your commission, your board of assessors, pursuant to a letter written by the mayor of the city, dated January 18, 1910, in a certain real estate award and an investigation was had. You remember that letter? An investigation was had after that and a report was made. Mr. Hennessey, who was one of the assessors at that time, said that there were seven or eight copies made of that report, each assessor had one and he says he has not his copy, but he left one in the secretary's office when he left. Will you look for such a report? A. We have.

Q. Did you find it? A. No copy in existence in our office. Copy was forwarded to the mayor's office.

Senator Thompson.—That is all I want. I am very sorry to have kept you here as long as we have.

Mr. Ormond leaves the stand which is taken by Mr. WILLIAM G. FULTON, who is sworn and testifies as follows:

By Mr. Moss:

Q. Mr. Fulton, can you explain why it is that over in Atlantic avenue in Brooklyn there is a physical connection between the Fourth Avenue subway and the Interborough Rapid Transit subway and the Long island Railway, but which is boarded up and not used and the public could use it except for that board which has been there for the last five or six months? A. Four or five months ago an agreement was submitted to both companies, the

New York Municipal and the I. R. T. which took care of the interchange of passengers coming from the Pacific Street station to the Atlantic Avenue station and a conference was held at the commissioner's office about two weeks ago at which the general session took it up. It was proposed that there were two phases of the situation and a scheme was to be worked out by which the property of the Long Island Railroad Company would be utilized, by which it could go through the port of the I. R. T. Co. without paying a fare to the I. R. T. Co. as now proposed. I believe the B. R. T. have agreed to take it up with the Long Island Railroad Company. I have heard that the present intent is to execute the present form of contract for the utilization of the physical structure or passageway to be used by passengers from the B. R. T. and Fourth Avenue subway to the I. R. T. subway station, and I believe that is to be executed in a few days.

Senator Thompson.—Has that been that way for the last five or six months? A. No, it has not. It practically has just been connective for the last three or four weeks.

Senator Thompson.—Passageway has been all constructed? A. No, I don't think it is over a month or a month and a half.

Senator Lawson.—There is a matter of something which we believe the commissioners themselves ought to take cognizance of—the operation of this loop. A. You are not speaking about the same thing.

Senator Thompson.—Senator Lawson wants to talk about the Center Street loop. A. You mean the Brooklyn bridge passageway?

Senator Lawson.—What we want is to talk with one of the commissioners who is familiar with this \$800,000 connection down here in the basement of this building connecting the Queensboro bridge and the Brooklyn bridge. Mr. Whitney knows a lot about it and if we can get his views about it to-morrow morning—

Mr. Crummey.—I will speak to Commissioner Whitney and ask him to speak to you.

Senator Lawson.—What we want is to have the Public Service Commission take up the matter with the bridge commission and

the B. R. T.—the question of utilizing this connection down here in the basement.

Senator Thompson.—I am familiar, personally, with the Lockport situation about which Mr. Robin testified. I was a member of the Assembly in 1904 and 1905. In the year 1904 the board of trade of the city of Lockport was interested in the charter and talked of owning it. Mr. Whitman, as counsel, the mayor and myself befriended the legislation. The legislation failed that year by veto. They attempted it the second year and the Citizen's Union failed to appear in opposition as they had done the first year.

Mr. Fulton leaves the stand which is taken by Mr.
MILLER—J. B. Miller.

Mr. Miller.—I merely want to call the attention of the Committee to supplement what Commissioner Tomkins said on one point which seems to be on so very important a question as the Public Service Commission. As you remember, he showed you a map which showed the line of the New York Central running through the blocks. Now, what I want to call attention to is that there is no arrangement made by which the New York Central will be compelled to give service to the owners of the property in those blocks if they don't wish to do so. That is, practically the railroad will be able to say which of the houses shall receive tracks and sidings running into it from the railroads and which of them shall not receive tracks and sidings running into the railroad, so that apparently the railroad can give a siding to one house and refuse it to another house, or attach conditions to one house in favor of another house.

Mr. Moss.—Nobody to call them to account?

Mr. Miller.—So there is apparently, as Mr. Marsh said here early to-day that he believed there might be an attempt made to control the business of the city, they certainly have the power to control just as much business as they please from 30th street down, as you saw on this map. They go right through these blocks and there is no relief. They have bought the land and they can do what they please with it. I merely call the attention to

it because I don't believe the Public Service Commission would have allowed this matter to go through if their attention had been called to it.

The other point is just this: Commissioner Tomkins spoke about the control of the islands, which land was given to the railroad, south of 59th street. I want to call attention to the control north of 59th street is just as strong, so there is no reason why, if they don't wish this control, they should desire such wide tracks as they are now asking for because the average trains each way is 23 trains a day. So they have a headway of about sixty minutes. Why they should need six tracks up to 155th street and four tracks beyond Washington Park unless it is to cut out everybody else is a thing I can't prove, but it has struck me all the way through this that there is no explanation except to continue the Chinese Wall which they are building up along the entire west side of the city.

I merely say one word more and that is going a little outside the record, that talking about wheeling the Jersey trains over here, there is just now this wonderful chance to do it. That is the courthouse site. If they would put a tunnel over the Hudson River tunnel and bring it out here on the courthouse site, which they don't know what to do with, they could save the whole east side. The rents which these railroads pay to the cost of their water transportation certainly represents the interest of wheeling the tunnel over here. So, as a money proposition, it could be carried out and that would awaken the whole east side to what is now happening. They didn't tell half the truth as to what is going on in New Jersey and what is going to happen in the course of twenty or thirty years. Newark is going to be the metropolis. It comes up every time that the rate should be made cheaper to New Jersey and if the rate is made cheaper, no matter how small it is it will never be changed. There is just this one change here. Here lies that great space of ground they don't know what to do with. They can have a freight house there and have factories all along the east side, which is lying dead, and if they had any sense at all they would tackle these islands, turn them into freight yards and commercial centers and we would have a greater New York which extends away out to the east and

away to the south and there should be a re-arrangement of our freight facilities with reference to bringing it into the city. The right way is the East river and not the North river. I don't speak from the point of view that Mr. Tomkins did, from the United States interests; I speak from the interests of the State of New York; the one chance of the State of New York is now here and when it is gone the question is when it will come again.

Mr. Moss.— Thank you, Mr. Miller.

Mr. Shuster.— I have something to add to the record; the printed data supplied by the B. R. T. and its allies to the sub-committee, consisting of general balance sheets, specific questions and answers to specific questions submitted. Each of these envelopes which I offer, I have marked as a separate exhibit and that contains all of the data in regard to each of the departments, and they will stand as Exhibits 1 to 10 inclusive, of this date. I ask if they will be received.

All of this stuff we leave in Morse's safe down there.

Senator Thompson.— Anything more to-night?

Mr. Moss.— We have Mr. Higginson, expert on the I. R. T. situation and probably a little additional matter to the executive session. I am making a little investigation for some papers.

Senator Thompson.— We will adjourn subject to call of the Chair.

I have some remarks I want to make to the record but I guess I will make them to-morrow. We will suspend now.

Copies of the testimony of Mr. Miller yesterday, were delivered to the mayor and comptroller and president of the board of aldermen and president of the borough of Manhattan, corporation counsel, to-day.

Mr. Moss.— Not only Mr. Miller's, but Mr. Rosenbluth's and Mr. Craig's.

Senator Thompson.— They were all handed in.

Mr. Moss (to stenographer).— Now, I ask you to prepare five copies of the testimony of Mr. Miller and Mr. Tomkins to be treated in the same way.

Senator Thompson.—The Public Service Commission of this district may have as many copies of our record as they desire. We will file one copy with them, anyway. They can have the testimony down to but not including the first day of March, which is now printed. I have only two copies of that prior to January 28 and I am told that next week I will have twenty-five copies.

Mr. Crummey.—Thank you very much.

Senator Thompson.—We will adjourn until to-morrow at 11 o'clock.

Adjournment.

JULY 1, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

MORNING SESSION.

Mr. Moss.—In the matter of the Lexington Avenue tunnel, I present a statement additional to the testimony of Duncan McBean, which he desires to have added to his testimony.

Type "H" as designed was handicaped \$702,439.60, with excessive materials as follows:

Excess materials per lineal foot of tunnel:	
Cast iron, 13,725 pounds at .02.....	\$274.50
concrete, 31.46 cubic yards at \$10.....	314.60
Cement, 9.8 barrels at \$1.15.....	11.27
Excavation, 13 cubic yards at \$1.00.....	13.00
	<hr/>
	\$613.37 per ft.
	<hr/>
Length of tunnel 1,080 feet at \$613.37.....	\$662,439.60
Extra cost of approaches, say.....	40,000.00
	<hr/>
	\$702,439.60
	<hr/>

John F. Stevens' bid for type "H" was higher than McMullen & Hoff's bid for type "K" only \$307,423; hence we see that if

type "H" had not been handicapped by an excessive amount of material the tunnel might have been built with sidewalks in each tube as shown in design for type "H" and with cast iron lining for \$395,016.60 less money than McMullen & Hoff's bid, and if steel had been used instead of cast iron an additional saving of \$45,000 could have been made.

Type "L" handicapped \$432,140.40 with excessive materials as follows:

Excess of materials per lineal foot of tunnel:

Cast iron, 8,896.5 pounds at .02.....	\$177.93
Concrete, 21.45 cubic yards at \$10.....	214.50
Cement, 6.7 barrels at \$1.15.....	7.70
	<hr/>
	\$400.13 per lin. ft.
	<hr/>
Length of tunnel, 1,080 ft. at \$400.13.....	\$432,140.40
	<hr/>

Or type "L" as designed was handicapped \$455,338.80 by using cast iron instead of steel.

Excess of materials per lineal foot of tunnel:

Metal, 12,793 pounds at .02.....	\$255.86
Concrete, 16 cubic yards at \$10.....	160.00
Cement, 5 barrels at \$1.15.....	5.75
	<hr/>
	\$421.61 per lin. ft.
	<hr/>
Length of tunnel,, 1,080 ft. at \$421.61.....	\$455,338.80
	<hr/>

O'Rourke's bid for type "L" was higher than McMullen & Hoff's bid for type "K" only \$83,168.95; hence we see that if type "L" had not been handicapped by an excessive amount of materials the tunnel could have been built in the same form as shown on design "L" for \$372,169.85 less than McMullen & Hoff's bid, and be built in the same form at type "L," which has 20 per cent less of its metal shell exposed to the action of the salt water and its partition wall's stability is dependent on tie rods which will sooner or later be destroyed by corrosion.

In regard to design type "K." Mr. Craven's letter of May 14, 1912, shows that he designed type "K" with the intent to have the Lexington Avenue tunnel constructed as the Detroit tunnel was constructed.

But I fail to find anything in the contract, specifications or plans, under which the contract was let, that discloses that this tunnel would be permitted to be built in this manner. On the contrary, I find that the specifications provide that the concrete must be allowed to harden and set before it is flooded with water, which makes the manner of construction used at Detroit prohibitive, because by far the greater portion of the concrete used to build the Detroit structure was deposited in the water. Depositing the concrete in the water is one of the prominent features of the manner in which the Detroit structure was built.

The Detroit construction necessitates that the metal shells be fastened together by interspaced, transverse, rectangular diaphragms of steel plates and angle bars, the outer edges of which are coincident with the outer edges of the concrete that is placed around the sides and on top of the metal shells. No diaphragms are shown on type "K" and the metal shells are connected together with lattice work attached to the adjacent flattened sides of the tube. For the Detroit construction it is essential that the outer edges of the top and sides of these transverse steel diaphragms are directly in contact with the water surrounding the structure, whereas type "K" is designed so that all the steel is protected from the action upon it of the salt water by concrete at least two feet in thickness. Therefore, design type "K," as shown in the contract plans, does not show that the Detroit construction may be used to build the Lexington Avenue tunnel.

In the Detroit tunnel each of the metal shells, which form the tubes in which the "tunnel proper" is constructed, form a complete circle, and the ring of concrete or "tunnel proper" within them also forms a complete circle, but the metal shells in type "K" design are distorted by flattening their adjacent sides for a height of about 12 feet, which necessitates distorting the form of the "tunnel proper" so that the adjacent side walls are vertical and only 12" in thickness, whereas the arch and invert are circular and 15" in thickness. The strength of the structure

is greatly weakened by making these side walls only 12" thick and vertical instead of circular, for there will be a greater pressure per square foot on these vertical side walls than there will be on the arch, which is circular and 15" in thickness. Although the spaces between the adjacent sides of the metal shells and the "tunnel proper" within them is faulty construction, because the porosity of the exterior concrete will permit the hydrostatic pressure to be as great upon them as though these spaces were filled with water. These vertical side walls if built as shown on plan type "K" would not have sufficient strength to withstand the hydrostatic pressure that there would be upon them. There are niches cut into the 12-inch vertical walls every 20 feet, which decreases their strength. There are no openings between the inner and the outer tubes in design "K," as there are in type "H" and type "L," and as both sides of inner tubes are flattened it reduces their width so much that in case of an accident to a train within them there would be no escape for the passengers except from the ends of the train.

It is obvious that if the four metal shells in type "K" were made to form a complete circle, with a space of two feet between their adjacent sides, the width of the total structure would be so great and would require such a great quantity of materials to construct it, and would cost so much, that it would not be competitive with the design of tunnel such as that built under the Harlem river at 145th street, which probably explains why the strength of the structure in designing type "K" was sacrificed.

Both the Harlem river tunnel at 145th street and the Detroit river tunnel were constructed by dredging a trench in the bed of the river, preparing a preliminary foundation in the bottom of the trench with piles, then building in the trench a working chamber within which, after the water had been pumped out, the "tunnel proper" was built. In constructing the Harlem river tunnel all the concrete used in the structure was put in place in the dry, and the hydrostatic pressure was not permitted to come upon the bottom of the structure until it was completed, which enabled limiting the quantity of material required to build the structure to what is necessary to overcome the buoyancy of the completed structure, which if placed in a circular form around an opening

always, when submerged, has more strength than is requisite to withstand the pressure of the surrounding medium upon the completed structure. To provide for placing the concrete in the dry and allow it to harden and set before it is flooded with water, enables building the metal shells without spaces between them, consequently there is no hydrostatic pressure on the partition walls between the tubes of the completed tunnel. Type "H" and type "L" are designed on this basis. Whereas in constructing the Detroit river tunnel all the concrete placed under, between, on the sides and over the top of the metal shells was deposited in the water; to provide for placing concrete underneath them necessitated that the metal shells be placed three feet apart. The metal shells were filled with water until sufficient concrete was placed round about them so that its weight would overcome their buoyancy when unwatered, which required 25.5 cubic yards of concrete per lineal foot of tunnel. When the water was pumped out of the metal shells nine cubic yards of concrete per lineal foot of tunnel to form the "tunnel proper" was placed within them, which reduced the air within the structure so that the buoyancy of the completed structure required the weight of 25 cubic yards of concrete per lineal foot less than was required to overcome the buoyancy of the metal shells before the "tunnel proper" was placed within them; consequently there is 25 cubic yards of concrete per lineal foot of tunnel in excess of what is necessary to overcome the buoyancy of the completed structure and provide the requisite strength, which shows why so much concrete is requisite in type "K" to permit of it being constructed as per the Detroit tunnel construction. Hence, it is obvious that type "H" and type "L" were handicapped with an excessive quantity of material, a more expensive quality of concrete, and a far more expensive and weighty form of metal, in order to permit type "K" to be competitive with them.

Although it is well known that concrete put in place in air will produce a much better product than concrete deposited in the water, yet we find that the exterior concrete prescribed for type "H" and type "L" is of a grade of one portion of cement, two portions of sand, four portions of broken stone, whereas there is prescribed for type "K" much cheaper grade, one portion of cement, three portions of sand, six portions of broken stone.

In regard to the design of Lexington avenue tunnel as it was built:

This design is quite different from design type "K" under which the contract was let. It shows that instead of the metal shells being fastened together with lattice-work which is entirely embedded in the concrete, as shown in type "K" that the metal shells are fastened together by transverse, rectangular, diaphragms of steel and angle bars, the outer edges of the concrete and are therefore directly in contact with the salt water surrounding the structure. The weak flattened adjacent sides of the metal shells and the weak flattened vertical side walls of the "tunnel proper," as shown in type "K," are strengthened by bolting together the side walls of two adjacent tubes. But as these bolts for a greater part of their length pass through the concrete that was deposited in the water between the metal shells, the action of the salt water that will reach the bolts through the pores of the said concrete will soon corrode them and leave the weak side walls without sufficient support to withstand the hydrostatic pressure that there will be against them. This design does not show a pile foundation under the structure as is shown on type "K" and demanded in section 47 of the specifications.

On a visit I made to the work I observed that the metal shells were unpainted and their surface was covered with rust, that is to say, they were permitted to commence corroding before they were lowered into place. The transverse, rectangular diaphragms placed upon the metal shells, about 15 feet apart, will form a conduit in the concrete on each side of them that will permit the salt water to reach the metal shells and corrode them.

There are no clauses in the specifications under which the contract was awarded that prescribed how the metal plates which form the metal shells are to be assembled. They are silent as to the length and width of the plates, as to how much of a lap at the seams and whether at the seams there shall be a single or a double row of rivets. In fact, there are no specifications providing for the construction of the type "K" metal shells, whereas on type "H" and type "L" plans there are given full details as to how their metal shells were to be constructed. In the Detroit tunnel the transverse rectangular diaphragms were placed 12 feet apart.

The metal plates were 5 feet in length and were assembled with a double row of rivets at the seams, whereas in the Lexington avenue tunnel the transverse diaphragms are placed 15 feet apart, the metal plates are 8 feet in length and are assembled with a single row of rivets at the seams, which made a saving to the contractors of a large amount of money but at a great sacrifice to the strength of the structure."

I present also the letter of Strong & Mellen, attorneys, dated August 5, 1913, addressed to Hon. Douglas Mathewson, deputy comptroller stamped with the comptroller's stamp, indicating its receipt at the comptroller's office on August 4, 1914:

STRONG & MELLEN,
27 Cedar Street,
New York.

August, 5, 1913.

Hon. Douglas Mathewson, Deputy Comptroller, 280 Broadway,
New York City:

Dear Sir.—We have your favor of July 30th in reply to our letter of July 18th, written in behalf of Duncan D. McBean. We have conferred with Mr. McBean and as a result desire to lay before you the following specific information. But Mr. McBean instructs us to state to you that in raising these objections he has no wish to delay the work, as he realizes the great public need of the earliest possible completion of the new subways.

As a citizen, and as a contractor of long experience and complete familiarity with the various methods of constructing subaqueous tunnels, he deems it his duty to point out departures from the plans and specifications which, while not lessening the cost of the work to the city, will increase the profits of the contractors, giving them an unfair advantage over others whose bids were rejected, and will decrease the efficiency and safety of the structure.

First, with reference to the construction of the metal shells:

As built by Messrs. McMullen & Hoff, the successful bidders for the construction of the Lexington avenue Harlem river tunnel, the shells, so far as completed, are not in accordance with the contract plan, type "K," as shown on the contract drawing No. C8K.

(a) The angle plates 4"x3"x1½", "at splices" on the inside of the metal shells are not built all around the inside thereof at all the splices of the plates which form the shells.

(b) The metal lattice-work shown on contract drawing No. C8K type "K" of the construction have been entirely omitted. The purpose of this lattice work was to hold the shells together, to brace them apart, to hold them on the same plane, and to strengthen their flattened adjacent sides every five feet of their length.

In your letter of July 30th you state: "It is reported to me that certain changes in the manner of construction have been made, largely at the suggestion of the designing engineer of the Public Service Commission, and that these changes will increase the strength of the structure without increasing the price to be paid by the city."

It is obvious to an engineer, our client states, that the departure from the contract drawing above referred to with respect to the angle plates tends to decrease the strength of the shells, the amount of steel to be installed by the contractors, and, therefore, to decrease the cost of the work to the contractors at the expense of structural efficiency.

The omission of the lattice work likewise tends to decrease the efficiency of the structure of the shells, to decrease the amount of steel to be supplied by the contractors, and, therefore, to decrease the cost of the work to the contractors at the expense of structural efficiency.

In a work of this character the maximum structural efficiency is essential to the safety of the public use of the subway.

Not only has the plan of construction shown on the contract drawing referred to been departed from in the foregoing particulars, but also the method of placing the concrete around the metal shells authorized by the specifications has been or is about to be departed from, as will be made clear by the following statement furnished to us by our client:

The exteriors of the metal shells have been divided by the contractors into longitudinal compartments, each about twelve feet in length. The division has been effected by riveting to the outside of each of the four shells, at points about 12 feet apart, longitudinally, rectangular, vertical, thin solid steel forms whose only

purpose can be to mould and support the concrete while being placed. These forms are not removable, as they are riveted to the shells, and consequently when surrounded by concrete will become a part of the structure. Similar forms were used in the construction of the tunnel built under the Detroit river at Detroit, Michigan, not only for the purpose of confining the concrete into compartments, but also for the purpose of performing the function which the lattice work shown on contract drawing No. C8K in this case was designed to perform. It must have been known to the designing engineer of the Lexington avenue tunnel that forms were used at Detroit as an essential feature of the tremie process of which Mr. Hoff, one of the contractors here, wrote that to their use "the success at Detroit is to be attributed." If the tremie process of placing the concrete about the metal shells was intended to be allowed, the specifications of the present contract should either specifically or by fair indifference have been framed with that intent in view, so that bidders for the work could have prepared their bids accordingly. It therefore becomes necessary to examine the specifications for the purpose of ascertaining whether they contain authority specifically, or by fair inference, for the use of the tremie process which it is apparent Messrs. McMullen & Hoff are preparing to use, from the fact that they have placed tremie scows at the site of the work and they have been permitted to place the forms above referred to in the steel structure.

The specifications for the construction of section No. 14 of the Lexington avenue route, that is to say, tunnels under the Harlem river and their approaches, are before us as we write. Section No. 1 reads that the specifications and contract drawings, taken in connection with the other provisions of the contract, "are intended by the Commission to be full and comprehensive, and to show all the work required to be done * * and, * * * as indicating the amount of work, its nature and the method of construction so far as the same are now distinctly apprehended."

Section No. 2 provides that the contractors shall construct and complete the railroad strictly in accordance with the requirements of the specifications.

By Article XIV the Commission reserves the right, during the progress of the work, to amplify the plans; and, by Article XV,

the further right to alter in any way it may deem necessary for the public interests, contract drawings in part or altogether, at any time during the progress of the work. Section No. 4 of the specifications provides that the sections and dimensions shown on the contract drawings are typical and applicable to the greater part of the work, but where changes are deemed necessary, they may be ordered under Article XV, and the engineer shall issue such plans and specifications as may be necessary.

Any alterations, therefore, of the drawings are limited by the requirement that they shall be necessary in the opinion of the Commission "for the public interest." If our client is right in stating that the omission of the angle plates from the interior and the lattice work from the exterior of the shell tends to increase the profits of the contractors at the expense of structural efficiency, it cannot be claimed that the alteration is for the public interests, and it certainly constitutes an alteration in a material respect, both as to cost and design.

Where a statute or contract vests discretion in an administrative officer, the law requires that it be exercised in good faith and reasonably, and does not consider the mere arbitrary exercise thereof as being in good faith or reasonable.

Section No. 14 of the specifications states that it is the very essence of them to secure a railroad structure underground which shall be free from the percolation of ground or outside water, and that the mixing and placing of the concrete shall be with this end in view.

Section No. 96 deals particularly with the Harlem river tunnels, stating that the work is more particularly indicated on the contract drawings.

Section No. 101 provides that all methods of constructing the tunnels shall be subject to the approval of the engineer and may be changed from time to time if, in his judgment, the local conditions so require. This must necessarily refer to changes which become necessary in the event that unforeseen conditions or contingencies arise. The change in the method of placing the concrete, to which we are now calling your attention, cannot be due to unforeseen contingencies or conditions which have arisen since the contract was let or during the progress of the work, for the

reason that the shells have not yet been put in place and the design of type "K" shown on the contract drawing, and the method of construction contained in the specifications are both capable of being precisely complied with, especially in view of the earlier experience in subway construction under the Harlem river.

The method of laying the concrete is stated in subdivision No. 12 of the specifications, beginning with section No. 141. Section No. 147 provides that the concrete for the tunnels under the river will be as indicated on the plans. This refers to the composition of the concrete, which is shown on contract drawing No. C8K as one part of cement, three parts of sand and six parts of stone.

Section No. 151 provides that the concrete shall be placed, immediately after mixing, in layers as directed by the engineer, and shall be thoroughly compacted throughout the mass by ramming or spading, special tamping bars or tools being used as approved by the engineer; that the amount of water used in making the concrete shall be as approved by the engineer, and ramming shall be continued until the water flushes the surface; as a rule, however, concrete shall be placed wet.

Section No. 153 is as follows:

"The concrete shall be allowed to set for twelve (12) hours, or more, if so directed, before any work shall be laid upon it; and no walking over or working upon it shall be allowed while it is setting. Concrete shall not be flooded with water before being thoroughly set."

Our client assures us that it is a well-known engineering fact that concrete cannot be placed below the surface of water by the tremie process without being exposed to or flooded with the water.

Section No. 156 provides that in all cases of joining old with new work, the old surfaces shall be thoroughly cleaned and wet and a coating of mortar or cement shall be applied, if required, before placing the concrete.

Section No. 157 requires that suitable forms shall be provided by the contractors to support concrete while being placed in the walls or roofs, and that these forms shall be immediately replaced by new ones as soon as they commence to lose their proper shape.

Before being used they shall be carefully cleaned of cement and dirt in order to provide a perfectly smooth face to the exposed surface of the concrete. They may be made of wood or of metals sufficiently thick to retain their shape without the use of wood.

Section No. 161 provides that the forms shall be set true to line, firmly secured, and be so tight as not to allow water in the mortar to escape; that they shall be thoroughly wet before placing the concrete and shall be removed as soon after the concrete has been placed as in the judgment of the engineer may be done with safety to the work.

Section No. 164 states the intention of the specifications to be to obtain impervious to water and that the concrete shall be mixed and deposited with this end in view.

Our client contends that the use of the tremie process must lead to clear violations of these specifications. The concrete forms in this case, as above stated, have been riveted to the metal shells and therefore cannot be removed. They are made of steel and are exposed to the action of salt water and sewerage gas, which will soon corrode them and leave only streaks of rust in their place. Their use when built into the concrete, as must necessarily be the case, cannot produce as strong a tunnel as if the concrete was placed in accordance with the requirements of the specifications, because these forms separate the concrete into compartments each about twelve feet in length, thus destroying the longitudinal bond and continuity of the concrete walls and roof, which form the tunnel structure outside of and around the shells.

To deposit the concrete into a roofless and bothomless compartment, as it is proposed to do by the tremie process, will be in direct violation of section No. 161 of the specifications, in that the concrete forms will not be so tight as not to allow water in the mortar to escape. The concrete will necessarily be deposited in the compartments while they are filled with water and the bottom layer will be deposited in the mud and sewerage matter at the bottom of the dredged trench, which obviously will not be clean of all debris and dirt, in direct violation of section No. 154 of the specifications.

Our client submits that the clear intention of the specifications is that the concrete shall be laid by some process that would allow it to be laid in the air, free, absolutely, from contact with the

river water until after it should be thoroughly set. Clearly the concrete placed about the shells by the tremie process after they shall have been sunk in the river cannot be "impervious to water." The water of the Harlem river, containing all kinds of sewerage matter, must necessarily impair the strength of the concrete while being laid by the tremie process.

Without unduly prolonging this letter, it must be apparent that the particular instances above referred to indicate that the specifications have not been and are not being complied with, and that the changes in the manner of construction which have been made at the suggestion of the designing engineer of the Public Service Commission will tend to decrease rather than increase the strength of the structure, even though the price to the city may not be increased thereby.

Our client submits that it must be obvious that the bids for the work, including that of the successful bidders, would have been much lower if the specifications had in terms or by fair inference permitted the use of the tremie process. If the contractors are permitted to use that process now they will be given an advantage of several hundred thousand dollars over their competitors, and a tunnel very much inferior to one built strictly in accordance with the requirements of the specifications will result. We are assured that the specifications and contract drawings can be strictly adhered to and the concrete be placed in every particular in accordance therewith, either by using the old cofferdam method of construction or the method used in constructing the existing subway tunnel under the Harlem river, or the method suggested by Mr. O'Rourke, one of the bidders for this work.

If our client is correct, we submit that in order to avoid delay in the completion of the subway Messrs. McMullen & Hoff should be required to follow the specifications and contract drawings without delay. We trust, therefore, that your engineers will inquire into the matter forthwith, as it is of the utmost importance that the moneys appropriated for building the new tunnel shall not be expended for a tunnel not built in compliance with the requirements of the specifications and contract drawings.

Yours very truly,

(Signed) STRONG & MELLEN.

I introduce in evidence a letter written by Mr. R. Walter Creuzbaur produced from the files of the comptroller's office, dated May 28, 1912, to Hon. William A. Prendergast, comptroller, the city of New York:

Under resolution of the Board of Estimate of the 23d inst. the question of consenting to an award of contract by the Public Service Commission for section 14, route 5, of the Lexington avenue subway, under type "K" plan, has been referred to the comptroller for consideration and report. Proposals had been invited on three different designs for 1080 feet of this section of the subway where it is to run under the Harlem river.

On behalf of the John F. Stevens Construction Company, the low bidder for one of the designs specified by the Commission, and after careful study of the methods required to carry out the plans of the Commission, the results possible of accomplishment and the general efficiency and availability of the different designs, I beg to submit certain reasons which in my judgment form sufficient basis for the following conclusions:

A. That the proposed award to Arthur McMullen and Olaf Hoff, the low bidders on type "K," should not be approved because it is not the lowest and best bid for the city of New York.

B. That the type known as "H" has sufficient advantages to warrant the expenditure by the city of far more than the difference in the low bid of this and type "K."

C. That the approval of the award by the Public Service Commission to Arthur McMullen and Olaf Hoff should therefore be refused and the Public Service Commission should be requested to reconsider such award.

I submit that the Board of Estimate should now approve this large investment by the city only after careful consideration of each of the three designs, and of the methods of construction made necessary in producing what the designs show, so far as fixed methods control the quality, character and permanency of the best work procurable under the design.

Various features of these tunnels, of cross connections, or lack of cross connections between tracks, and the safety sidewalks at the high level, will also I believe appeal to the board as of great importance. It is not a case of asking consideration for a high

bidder; it is for fair consideration of value of the investment by the city and for adoption of the lowest proposal for the best design.

History.

The Public Service Commission prepared in 1910 certain designs for this work and considered an award to Arthur McMullen on type "K." No award was made and in part at the suggestion of the comptroller certain changes were made in the plans.

The benefit of such revision is evident from the difference in the bids, a small proportion being for change in headroom of subway:

	Type "H."	Type "K."
Original low bid.....	\$5,748,608	\$4,823,513
Present low bid.....	4,207,198	3,889,775

Difference in Types.

The basis of the bidding is clearly illustrated by the attached sheet where the three contract designs are assembled. From this it will be seen that the two major points of difference in design are:

1. Type "H."—A paid of twin tubes built in two separate concrete jackets. Types "K" and "L."—A single structure containing four tubes in a single concrete jacket.

2. Types "H" and "L" have heavy cast iron lining. Type "K" has light steel plate lining.

Types "H" and "L" are designed to be built by the roof method of caisson construction permitting all work to be done in the open. Type "K" is designed to be built by the outside construction of the steel tubes, sinking them in water onto a foundation prepared by dredging and surrounding them by concrete deposited in water.

The real question in the previous letting and which now comes up again was as to the desirability of the two methods of construction, the open method, which was successfully followed in the Harlem tubes now in use, or the working in water method, which was used in the Detroit river tunnel.

There are many details and structural differences which will be referred to beyond, but the effect on the possible results of the

methods which must be followed has great importance in the determination of the most advantageous design. It is not sufficient to assume perfection of execution of design, but it is necessary to determine as to the relative advantages under the conditions which will probably exist.

Foundation.

In building either type of tunnel a broad trench must be dredged across the river about 35 feet deep for "K" and 25 feet deep for "H." In "H" the remainder of the excavation is taken out by pick and shovel.

In type "H" the upper half or roof of the tunnel is built in sections which are bulkheaded at the ends and sunk to final position on heavy sheet piling previously driven along the sides of the trench. The tunnel top itself then acts as a caisson, or diving bell, and the remainder of the excavation and construction of foundation is carried on by ordinary methods in the air, every foot of the foundation being open to the fullest inspection at all times, thus eliminating any uncertainty as to the strength or durability of the structure. Unexpected soft pockets or irregularities impossible of discovery in 50 feet of turbid water are by this method exposed to direct view, and their correction is readily possible by the use of extra concrete, or concrete or metal piles, etc.

With type "K" there is no certainty as to the foundation. The deep trench needed to reach sub-grade is first dug through the deposited silt, sewage and original river bottom. This trench, over 76 feet wide, must then be kept open in a tidal stream where every tide washed material in and out. Into this trench the completed steel structure has to be sunk and placed on temporary foundations theoretically two feet three inches above the bottom of the trench. Under the swing of the Harlem river there will be a continual eddying around these tubes eroding the bottom and sides of the trench in some places and depositing silt, sewage, etc., in others. Into this eddying water concrete must then be deposited to form a jacket around the tubes. Of necessity this jacket will be irregular in character and extent. That it must be porous and permeable is certain. Mr. Hoff states that the Detroit river design contemplated such porosity (Trans. Am. Soc. Civil Engrs., Dec. 7, 1911). Mr. W. S. Kinnear, engineer on the

Detroit work, stated (Trans. Am. Soc. Civil Engrs., Dec., 1911) that the concrete under the Detroit river tubes varied from one to six feet in thickness. The intention was to make it of uniform thickness.

All of the foundation work with type "K" is of necessity done more than 50 feet below a tidal stream, in which, owing to its turbidity, a diver will have great difficulty in making an examination, and no examination is practicable after the tubes have been once sunk into the trench. During the time of actual foundation construction the conditions will be practically unknown.

Concrete Jacket.

The concrete jacket around the tubes serves several purposes:

1. It is the real strength of the structure in the type "K" design. Without it the liability of collapse, due to settlement or other disturbance, would become great if not certain.

2. It serves to protect the metal tube from contact with the salt water and consequent corrosion.

3. It absorbs the hydrostatic pressure which the steel structure cannot carry.

In so far as it is well built the jacket will fulfill its functions, but it must be dense perfect concrete of the designed thickness to accomplish these results.

The relative certainty of concrete construction in the open under certain inspection and of that requiring deposit in 50 feet of tidal water is self-evident. This becomes of even greater importance in view of the light steel tube in type "K" than would otherwise be the case.

Type "K" has six vertical steel plate diaphragms 11 feet 9 inches high. These plates cannot withstand the hydrostatic pressure. Yet they are supported by only a 12-inch wall of concrete, the resistance of which is practically nothing, and dependence is placed on the cutting off of the hydrostatic pressure by 1.3.6 concrete deposited under 50 feet of water in a pocket only 2 feet wide and over 11 feet deep. Even under open air conditions the effectiveness of such construction might be questioned.

In this connection I wish to call attention to certain features of the design which I am unable to explain, viz.:

For the design involving deposit under water 1.3.6 concrete is specified, while for the design permitting the construction in the open and under which the greatest certainty is possible, the Commission has required 1.2.4 concrete. The difference in cement alone is over \$25,000 in favor of type "K" under conditions in which engineers will generally agree the requirements should have been reversed.

Lining.

Type "K" has a steel lining made of 3/8" plate with light angles at joints only. Type "H" has a cast iron lining one inch thick with frequent heavy ribs.

It is well known that the steel tubes alone will not stand up under the hydrostatic pressure, and reliance is placed on the concrete placed inside, 15 inches thick in the crown and 12 inches thick at the side wall, with niches reducing that concrete wall to three inches thick every twenty feet. The city of New York has never faced a more serious question of policy. It is to build a structure through which its citizens must pass under fifty feet of water, and it considers the adoption of a design depending for real protection against flooding on a concrete lining three to fifteen inches thick.

Type "H" has a cast iron lining of ample strength to carry the loads, as has been well shown in the many existing railway tubes where such cast iron plates carry a similar pressure without outside concrete jacket. Yet this design is forced by the Commission to carry the burden of more concrete of a more expensive mix than is required for type "K."

If a steel tube was satisfactory, why did the Public Service Commission not permit its use in place of cast iron in type "H?" By its use the difference in cost of metal alone at the market price would have been over \$410,000.

In the Detroit river tunnel the steel tube was a true complete circle designed to resist the full hydrostatic pressure, but this pressure does not appear to have been sufficiently provided for in the plans of the Public Service Commission.

The water of the Harlem river is exceptionally bad in its effect on steel plates. On the flushing tunnel of the Gowanus canal the writer was forced to adopt copper gratings on account of the

excessive corrosion of wrought iron by a water highly charged with sewage, chemical and factory waste, and to a large degree similar to the Harlem river water. Yet with type "K" a concrete protective covering, less effective owing to its mix and method of deposit, is used to surround a 3/8" steel lining, which is notably less resistant to corrosion than cast iron, and in type "H" a better jacket is required to cover a tube made of cast iron plates one inch thick.

Operating and General Features.

The advantages of independent twin tunnels as compared with one interconnecting set of four tubes is evident. With the latter a break or flood of one affects all. This might occur through settlement of foundation, break of water main, corrosion of lining, or any other disturbance. From the viewpoint of continuity and permanence of service this is of great importance.

In type "H" four high level sidewalks are provided. These are readily accessible from car platforms or windows. The other types have only two such sidewalks in the outer tubes. Passengers in the inner tubes have no such protection. The importance of such provision was shown by the Paris subway disaster of August 10, 1903, since when the Pennsylvania Railway has spent hundreds of thousands of dollars to provide the necessary walks at the car window level.

Type "H" provides ready places of retreat for workmen every 20 feet. Type "K" provides only a niche of doubtful value owing to its limited size.

Type "H" provides cross connections between the two tubes of a pair every 20 feet, thus insuring a free passageway in case of block on one line. Type "K" calls for two cross connections only, in the total distance of 1080 feet. This very essential omission can and probably would be supplied by a change in the plans involving construction of many more connections. Such a change will add materially to the cost and will be paid for as an extra. What is the limit of such an extra? Is a design requiring it acceptable?

I might continue further to point out various features of more or less importance from a technical and practical point of view,

but I believe that the information presented above warrants the propositions I have advanced as to the proper procedure of the comptroller under the conditions.

This contract was to be awarded to the lowest bidder after a comparison of the various bids on the several types. The invitation to contractors by the Public Service Commission states: "After the comparison of the bids the Commission will determine which of such types should be adopted." It is now proposed to award the work on the basis of a bid for a type of construction materially less advantageous, notably less strong, containing practically half a million dollars less value in material and requiring changes in design involving claims for extras for an unknown amount. Such action is certain to result to the disadvantage of the city, and it is within the purpose and duty of your office to prevent.

I desire to point out that this communication is solely directed to the advantages of type "H" design as compared with the others under the conditions which will be found in actual construction. I do not desire to raise any question as to the efficiency or ability of the bidders, nor as to the good faith of all connected with the problem. I simply wish to bring these matters to your attention in order that the full benefits of type "H" may be clearly understood and because both as the representative of the John F. Stevens Construction Company and as an engineer connected for some time with the city in a capacity where I was called upon to give these matters official consideration, I believe that the city will be best served by the acceptance of the lowest bid on type "H."

Now, in the same manner I have made arrangements with an eminent engineer to testify as to his personal observations of this tunnel and give his professional opinion upon it, but he has been detained in the trial of a case in New Jersey and it will be necessary for me to procure his testimony or some statement from him and introduce it into the record later. It is Professor Carpenter of Cornell University.

We have produced this morning as a witness Mr. Henry H. Edgerton, who will testify concerning the gas and electricity in the city of New York. Mr. Edgerton is an expert and that will appear in his testimony. He has promised after the hearing to

submit a brief statement giving complete data in connection with his testimony.

By Mr. Moss:

Q. What experience have you had in matters of public lighting in the city of New York and elsewhere? A. I have been informed in regard to the cost of lighting in the city of New York since 1872.

Q. Since 1872, yes. And have you been employed by the State of New York in investigations? A. I was expert for the State of New York and also for the city in the 80-cent gas case.

Q. And did you give testimony in the Hughes investigation? A. I attended and made notes in regard to the Hughes investigation. I talked with Mr. Hughes in regard to it, with the result that the next day I received a telegram from the Attorney-General of the State to come to New York with a view to testifying in the case.

Q. Yes. You have given almost your undivided attention to this subject for a number of years past? A. Ever since 1865.

Q. But in the last fifteen or twenty years you practically occupied your entire time? A. Entire time since 1882. I was chief engineer and chemist of the United Gas Company and after that was with the General Electric Company and have been with other concerns in conducting investigations, but more particularly with regard to the costs of operations and large matters of that kind.

Q. And now, Mr. Edgerton, as you have talked these matters over with Mr. Klein, and he understands you and you understand him, I am going to ask him to present the questions to you.

Mr. Klein.—Have you inquired into the different phases of electric lighting in the city of New York? A. Yes. I have gone into the subject very carefully. My testimony in the New York Edison case was instrumental in showing some of the peculiarities of the charges for current and also in the Brooklyn Edison Company.

Q. Well, you found that rates for current varied greatly, didn't you? A. Yes. They vary from seventy-five hundredths of a cent per kilowatt hour up to twelve cents.

Q. And who pays the highest rate? A. The highest rate is paid by what is called the meter consumers and the next highest

by the residential consumers, and so on down the line, although all consumers pay high rates before they get a chance at the low rates. That is, all the consumers using the current for business purposes, lighting the streets, etc., pay first the high rate before getting down step by step to the lower rates.

Q. Did you prepare any statistics to show what proportion of the income of the electrical companies is derived from the small consumers and what proportion of the current those consumers use as compared with the rate paid by the large consumers and the proportion of current used by the large consumers? A. I have prepared that in the New York Edison case, but I haven't the data with me in that case. I can say from recollection that the small consumers pay from two to three times the price of the larger consumers in the New York Edison case and a much larger proportion in that of the Brooklyn case.

Q. You don't remember the actual percentages that you prepared, do you? A. Not in those cases. I didn't bring the data in connection with that subject along with me, but I have only my recollection. I have prepared more particularly and have with me the data on the rate to the United States government and the rate to the city.

Q. And you submit the statement that you have prepared on the rates for current to the city of New York and the United States government? A. Yes.

Q. The city of New York purchases electric current for the lighting of streets and parks and office buildings, is that correct? A. All public buildings. Schools.

Q. And has the total cost of that current been increased in the last several years? A. Yes, it has increased very largely. For instance, during the period between 1908 and 1912 the lighting bill of the city increased \$1,094,000 for electricity and there was a decrease of \$39,000 for gas, making a net increase of \$1,055,000.

Q. What is the total annual payment of the city of New York for electric current? A. The last time I looked into it, taking it as a whole for the lighting of streets and public buildings, it was about \$5,000,000.

Q. That is for gas and electricity. How much for electricity approximately? A. I haven't that among my notes except for the

year 1912. The electricity rate was \$3,648,000 and the gas was \$814,000.

Q. Has the rate for electric current been increased or decreased to the city of New York in the last several years? A. Now, the answer to that requires an explanation. You must understand the value of electricity for lighting depends upon what we call the kilowatt hour. That is the basis of measurement for current. On that basis the cost to the city for street lighting has been increased about 80 per cent. That is between the figures 3.04 per kilowatt hour up to 5.31 cents per kilowatt hour at present. That is the average, I should say, for the year 1915. At that time and a little previously the lamps were changed from what we call arc lamps to the improved nitrogen lamps. The result of that change was a reduction from 13,491,000 kilowatt hours to 8,215,000 kilowatt hours, but the price, as I stated, increased from 3.04 cents to 5.31 cents. Those figures are taken from the reports sent by the electrical companies to the Commission.

Q. Then you mean to say that in spite of the economy of the improved lamps the rate of electricity paid by the city of New York is larger than previously? A. Yes, 80 per cent is calculated as the increase of the year 1916 over the year 1915.

Q. Well, then, if the commissioner of water supply claims that a saving has been made by his administration in the cost of electric current used by the city of New York, is that statement correct? A. Not according to the contracts. I find an increase in the city bills for street lighting in Manhattan and the Bronx, 1916 over 1915 figures of \$273,925.

Q. That is an increase of 25 per cent or over? A. That is 32.3 per cent.

Q. You have prepared a statement on the matter of municipal lighting, have you not? A. Yes.

Q. And is this a copy? I will read:

"An impression has been created by sundry articles in the press that the improved lamps used for street lighting have, by their greater efficiency, decreased the city's lighting bill.

They certainly should have done so; for the old arc lamps used 132 per cent more current than the new; that is 696 watts an hour for the old in the place of 300 watts an hour in the case of one

type of new lamp and 400 watts in the case of another. The 400 watt lamp should have had an economy over the old of 74 per cent.

Looking at the bills for lighting, however, we find that over the entire city during Mr. Gaynor's administration the city bills increased \$1,055,012.63 a year between 1908 and 1912.

Since that time, the street lighting of Manhattan and Bronx alone, as furnished by the Edison Company, ran as follows:

	Street Lights.
For the year 1912.....	\$825,825.61
For the year 1913.....	859,467.89
For the year 1915.....	847,030.00

For the year 1916, as scheduled, \$1,120,955.50 under contract.

The reduction which should have been made on account of the economy of the new lamps was taken up by the Edison Company by increasing the price of current per kilowatt hour from an average of 3.04 in 1915 as used on the old type of lamps to 5.482 cents per kilowatt hour in 1915, or 80 per cent increase in the price of current. These figures are obtained from the reports of the company.

Q. Those reports are filed in the office of the Public Service Commission, are they not? A. All except the contracts.

Q. And they are with the water commission? A. Yes.

Q. "The increase for Manhattan and Bronx, 1916 over 1915 figures \$273,925 for electric street lighting alone. For public building lighting the cost has gone down some, on account of competition of the city's own plants." But has the rate decreased to the city in connection with the lighting of public buildings? A. Well, it hasn't decreased, but there is an opportunity for the city to make its own current.

Q. But in the buildings not supplied by the city has the rate declined? A. I don't know about that.

Q. We will take that up later.

"Probably the best way of showing the relation of the new lamps to the old is the following table:

	Year 1915: Current used.	Billed at	Per Kw. Hrs.
Street arc lamps (old)	13,491,744.3 kw. hrs.	\$410,837.88	3.04 cts.
Street incandes't, new	8,215,744.2 “	436,192.12	5.31 “
	<hr/> 5,275,970.1 <hr/>		<hr/> 2.27 <hr/>

“ Decrease in current used 39.2 per cent. Increase of price per kw. hr. 74 per cent.

“ Of course, these percentage differences do not agree, one being based upon the high figure and the other upon the low; the amount billed being also different.

“ The policy of the electric companies generally, has been to absorb the advantages of the lamp improvement; in the case of the private consumer by offering ‘ free renewals ’ of the more wasteful lamps; in the case of the city the matter is still easier. There is no actual competition in the bidding. When it comes to the public buildings, all those of any size can make their own supply of current much cheaper than even the wholesale rates of the Edison Company.”

Q. Now, with reference to lighting public buildings, Mr. Edgerton, has there been any attempt on the part of the Public Service Commission to have the city own their plants for to manufacture current? A. There has been considerable effort. In fact, the Edison Company has had a renewal of their isolated plant, its special business being to prevent the introduction of an apparatus for manufacturing current in buildings. Another feature, they have hired experts from time to time, in the water department, to make reports on the cost in the private plants and also in the city plants, all with the idea of preventing the operation of private plants, and also shutting down those that are operating. Now, I have in my possession the reports made by the engineers who investigated for the water department these private plants. I am somewhat surprised at the results they get, but after looking over them I find that almost all of them have this particular kind of error. Here, for instance, is a report made on the state of affairs in the Tombs prison. The error in that report is a very cardinal one.

I will say about \$10,547 according to this report is charged to the production of steam for heating the building. That seems to be the amount it would cost after they got the Edison current in the Tombs prison, and the same charge is made while operating the private plants, although the private plants in the Tombs building supply the heat by means of the exhaust steam. In other words, \$10,547 is charged to operation, making a difference of \$21,094, and that plant has been running at a loss to the city ever since the year 1910 on account of this erroneous error in this report.

Q. Who made that report? A. That report was made by Reginald P. Bolton.

Q. For whom was that report prepared? A. That report was prepared for the commissioner of the water department.

Q. Is Mr. Latimer employed by the Edison Company? A. He works both the Edison Company and the water department, sometimes one and sometimes the other.

Q. And the plant in Tombs prison is a publicly owned plant? A. Yes, it is owned by the city and has been running at an extra expense to the city of approximately \$21,000 a year, owing to the fact that this error was made in charging steam instead of crediting it. It is a bookkeeping error. I don't know how such an error could occur, but it is apparently what they call a bookkeeping error.

Q. Has the attention of the city officials been called to that state of affairs? A. Yes, I have sent copies of that to the departments having charge. I called at the water commissioner's office and found that the original report was not there. It had been taken away and I offered him a copy — in fact I showed him this copy of it, and I also said I surmised where the original was because that is where I copied it. It is in the bureau of municipal research. As I am acquainted with the signatures of Mr. Lacombe and Mr. Bolton I knew it was the original and I wanted to copy it, or rather compare it with my copy.

Q. Apparently the water department is willing to accept the reports of Mr. Bolton in reference to the Tombs? A. They accepted them and shut down the operation of the plant.

Q. Did you have anything to do with the Hall of Records test? A. Not officially. I was authorized to investigate.

Q. Who authorized you to take part in that test? A. The bureau of municipal research allowed the inspection test to be made.

Q. And the test was conducted under the auspices of the bureau of municipal research. When was that test begun? A. On the 15th of December, 1912.

Q. What was the purpose of the test? A. The purpose of the test was to ascertain whether electricity, as made in a public building like that, cost more or less than the Edison rates for selling.

Q. At that time what was the rate charged by the Edison Company to the city? A. The rate was effected by the size of the building and whether it was for schools or public buildings. It is now established at six cents. At the time I began this investigation it was seven and a half cents.

Q. That was the rate to the Hall of Records? A. Well, the Edison Company never made any rate to the Hall of Records. On the contrary the city paid a rate of seven and a half cents for lighting and six cents for power.

Q. Prior to the test? A. It is now making for those four buildings, the Hall of Record, City Hall, City Court and County Court, for \$1.35 per kilowatt hour.

Q. Being made by whom? A. By the city.

Q. That includes the City Hall building? A. Yes, and the County Court and the City Court.

Q. Who paid for the test? A. The city paid for the installation of the apparatus required to make the test and the New York Edison Company, through the bureau of municipal research, paid for the experts.

Q. In other words, the city furnished the testing apparatus and the Edison Company paid the salaries of the men who made the test through the bureau of municipal research? A. Yes, the city paid the apparatus bills and the Edison the salaries.

Q. The total cost was figured to be divided in about half? A. About half, \$25,000.

Q. How long did the test last? A. The test lasted for one year, and I may say that during the test I had found evidence to show that the basis on which the test was made, the measurement of

steam, was likely to be erroneous and that was found to be the case, so that after the test was finished they weren't able to arrive at any satisfactory conclusion as regards the separate cost of electricity. They got at the total cost of all operations, but the operations of the building include many beside the electric current supplied. It includes the heating of the building, pumping of water and many other expenses. So that the object of the test was to separate the cost of electricity from the other costs, and to do that, instruments were put on to measure the use of steam for making electricity and the use of steam to make the other services. The measurements, I say, failed, and, therefore, there was no basis left for dividing the cost, so at the end they had to go back to the total cost of the bidding, and the Edison then made a bid to operate the building and do all the services. Now, of course, under that state of affairs there wouldn't have been any test required and they would have saved the \$25,000.

All they would have to do would be to take the total cost of the operation of the building, which was known very exactly, and let the Edison Company bid against that, and that was what they finally did. And therefore the purposes of the test failed.

Q. During the course of the test what did Bruere regard as the apparent failure of the test? A. I made a complaint against the plan of measurement at the beginning and I remember I told Bruere, but I remember I went afterwards to get some of this additional data about reports and a Mr. Sands told me it didn't make any difference because the tests were made to ascertain how low the Edison Company would have to bid to get the business.

Q. Mr. Sands of the Bureau of Municipal Research told you that the actual purpose was not to see if it would be cheaper for the city to manufacture its own current in the Hall of Records or to supply it in three other buildings, but the actual cost was to see how low it was necessary to bring the Edison Company so that they would bid for that work? A. Yes. As stated here, I never understood that there was any such purpose because it wouldn't have been necessary to make any test at all.

Q. Wasn't it declared in the Board of Estimate that the city should supply the buildings around the city hall from the plan in the Hall of Records? And also that the current could be manu-

factured much cheaper than the rate at which the Edison Company could supply it? A. The borough president made up his mind that that was the way to do it. That was Mr. McAneny and so the connections were made for that purpose and now all the buildings in the park are warmed and supplied with current by the Hall of Records.

Q. When was this test completed? A. December 15, 1913, and no reports on the subject appeared until 1916.

Q. You mean that no report appeared for more than two years. Why was there no report? A. As I say, there was nothing to base the report on really.

Q. What do you mean by that? A. I mean that the most important feature of the report was to ascertain how much steam it took to make the electricity compared with the other services. It was recognized that it failed in that particular and so they had to go back to this other project that Mr. Sands enunciated.

Q. Who do you hold responsible for the failure of the test? A. There is no one directly responsible, except that you may say that it arose from an error in adopting the method of measurement of steam, and the meter that measured was supposed to be correct and proved to be correct under certain conditions, but proved to be erroneous under the conditions that were used in the test.

Q. Have you examined the official report of the test as made by the Bureau of Municipal Research? Or by the expert? A. I examined it, looked it over, but did not attach any importance to it because it is well known on all sides that the bottom fell out.

Q. Did you see a report made by Mr. Bolton on the results of the test? A. I have it here.

Q. Is it correct from your point of view? A. It is in line with all of his other reports. I don't see any difference. It has the same cardinal errors. Mr. Bolton in arriving at his result calculates, for instance, how much it ought to take to heat a building, not how much it takes, but what it ought to take. How much steam is required to make current, and so on all along the line, and then adding to those errors the fundamental bookkeeping errors with which he charges a large amount of money to service when he should credit it causes confusion.

Q. Do you know of any persons interested in the Edison Company that are contributors to the Bureau of Municipal Research?

A. I have heard that said, but I don't know of any from my personal knowledge. I feel that the bureau is sustained by enterprising gentlemen who are somewhat interested in results. But they are people whom I would judge would be fair about it, that is to say, people conducting the operation might be interested in it, but as far as I have heard stated they did it for the purpose of really ascertaining what sort of service the city got.

Q. John D. Rockefeller contributes to the Bureau of Municipal Research. That is stated in their own report, and also George Cortelyou, President of the Consolidated Gas Company, which controls the Edison Company. A. Mr. Brady is a large supporter.

Q. Anthony N. Brady? A. I knew of some communications to the Bureau of Municipal Research from him, but I have no direct knowledge of how much he contributed.

Q. I think the records show that Mr. Brady is a large contributor. Mr. Brady holds stock in the New York Edison, not in the New York Brooklyn. The ownership of the stock lies in the Consolidated Gas Company? A. The object of my coming before the Committee was to present evidence I had that the Public Service Commission should really have control of these rates, not only the rates to the consumers, but to the city, state and government. When somebody in the government seems to think that the government can be saved something in electric lighting, they start and investigate and the result is that the government gets a special rate. The same thing happens in the city and get a special rate in certain cases and it gets a rate that is very far from special in other cases. And as I say it is with a view to having the Public Service Commission look into these rates that statistics and very valuable information have been gathered, not only from a public point of view, but from the operators of plants. The city apparently has no objection, or if it has it doesn't seem to show that it has to the Commission supervising these rates so that neither the government or the city can slip in and can get large rebates merely from getting them to make current at cheaper rates, and the government cannot come down and use graft on its private consumers in New York City as it does. The Commission should have the supervision of those rates.

Senator Thompson.—When the Committee adjourns to-day, it will adjourn subject to the call of the chair. We have made certain arrangements to hear persons, largely for the convenience of the persons, but somewhat for the convenience of the Committee because our time has been so fully occupied in the last four weeks that we have spent every available minute and haven't been able to furnish all of the matter of relevancy that should have gone on the record so that such testimony is to be taken in accordance with an agreement and understanding of those that will appear.

If, however, there are public officials that feel they are entitled to a hearing and want to explain their attitude in reference to matters which should have been called to the attention of the public, we will be glad to hear them with the understanding, of course, that they would submit themselves to cross examination.

Now, before adjourning I desire to acknowledge my gratitude for the assistance I have had here from a great many people, some of whom have been by their own choice nameless, some of whom do not desire to have their names made public, and others of whom there are so many that it would be impossible to put their names on the record. In mentioning the names of persons who have been of valuable assistance in the way of advice, in the way of consultation, in the matter of investigation — I don't want to in any way lay the mistakes of the Committee to them by mentioning their names, so do not connect them with the mistakes the Committee has made, we have probably made some, neither do I desire to shift the responsibility in any way, but I just desire to acknowledge some real, genuine, friendly assistance that I have had even from the newspapers and those who sometimes have been apparently critical. And in making these statements I don't want to minimize the good that it does even from those who criticise, provided the criticism is honest and it comes from their point of view.

Many criticisms have been of extreme value to the Committee because they have tended to make us see, to make us work harder if they were right.

The investigations which lead to the dual subway contract and the conditions which are so well known and which the record carries, I am indebted to Mr. Severance Johnson, of the New York American, for a great deal of helpful assistance in the fall months of 1915.

The Committee wishes to publicly acknowledge the assistance of Miss Sophie Irene Loeb, of the Evening World, in the Judge McCall investigation.

Special recognition is given to the gentlemen representing papers here, and I want to say in this connection that probably not one single day has elapsed without their being present. They called for months, and every day something of a confidential nature was talked about that was not for the benefit of the public and not in one single instance have they violated the confidential nature of the talks. Never once.

I refer to William Inglis, of the Evening World; Harry Carlisle, of the Evening Journal; Alfred Pierce, of the Evening Sun; Kenneth MacDougal, of the Brooklyn Times; Charles Johnson Post, of the Globe; Frank N. Robinson, of the Evening Mail; and George Morris, of the Telegram; the first six names given were the people who were always there, the seventh a greater part of the time. He was always entertaining when he was here. If there is any success in this investigation, I will lay it to the gentlemen named. If there are any failures, the responsibility is mine. I want to extend this portion of the record.

In extending the record I desire to give the credit where it belongs, to the various counsel of the Committee, the assistants and the members of the Committee themselves. I appreciate the services of Mr. Moss, whom I know has made personal sacrifices in this great public investigation, and I know you will amplify this you feel the way I do. I do not mention the mayor. The greatest service given us by any one from the beginning of this investigation to the last is represented by that given us by Mr. Moss. I do not mean to detract from that which is due the other counsel. The trying days last fall cannot be forgotten, but there is a difference. Senator Lawson is a state employee while Mr. Moss is not. He came to me from the ranks of the lawyers, walked out of a business where they have large fees, retainers and have a right to expect bonuses and all the comforts of life, and from out of that he walked to the support of this Committee, and lost opportunities to participate in those things. He rendered his service to the state because he was a citizen. Whether with or without pay depends upon the Legislature.

Mr. Moss.—Chairman, I am sorry that my name was mentioned here, because really I am very modest. I am bashful. When my name was spoken I blushed; I blush and can't help it, but it will not be right for me since you have done that to let you go without telling you and the Committee why I came in to this work.

I was surprised one evening to find a message from you requesting a conference. It was when you were left suddenly without counsel. Fortunately, I had seen you in a public meeting about two weeks before and my opinion of you formed by the newspapers had been entirely changed by my personal observation of you, and when that invitation was given, I came right into the business because I believed in you, and I believed in your Committee. I saw that you were in a hole, and whatever cost there has been to it perhaps, which is not so great after all, that cost was cheerfully paid because I realized that here was an honest Committee, a forcible chairman needing assistance because he had been deserted, and while not very well posted on the subway, I gave it study in odd minutes and my services have been an honorarium assessed to something more than mere mercenary value. I don't believe that any Committee has ever come to New York to overcome such great obstacles; I don't believe any Committee has ever come to New York and been left so stranded, so destitute of financial resources as this Committee has been left. I don't believe any Committee that was doomed by political movements in Albany and business movements in New York ever got its foot out of the grave and came out so triumphantly as this Committee.

It has been a spur to my enthusiasm and a comfort to my heart, and I think one of the greatest days was when this Committee decided to go on with this work, "Trust in God and Keep its Powder Dry."

I could not do better than to refer to the following letter written by me to Mr. Heaton:

"My Dear Mr. Heaton:

"I know of no one in the newspaper field who has in so short a time accomplished so effective a piece of work as the exhibition to the public of the decayed conditions of the Public Service Commission which she has done not only with

her able pen, but her close application to the actual accomplishment of this work.

"I cannot write too strongly of this matter. I believe myself safe in saying that without her, this work would not have been done, at least not at this time.

"Our committee organized June 24, 1915. We held hearings during July, September and October without particular interesting results and adjourned over election November 2d.

"On October 26th the Chairman met Miss Loeb at a meeting in South Brooklyn where she addressed the meeting in reference to gas rates and the Public Service Commission.

"She was pleading with the people to help force an 80c gas rate for them. I was about to leave the hall when she arose to speak, having already addressed the meeting. From the platform she urged me to return. I heard her speech and was impressed by her ability in ably presenting her subject logically and conclusively — as could only be accomplished by a person who had studied the subject in detail and had mastered an intimate knowledge of the workings of the Public Service Commission.

"After the meeting I waited to talk to her about it. She urged upon me the investigation of this Kings County gas rate case which had been pending for five years. She also told me about the stockholdings of McCall, which she earnestly begged me to investigate. So persistent was her plea that, against my own judgment that a person of the standing of Judge McCall must certainly have attended the divesting of such a stockholding before becoming a Commissioner as the law required, and in order to satisfy her and with her assistance I began investigations of these stockholdings. We could not find the name of the person who had the title in the company's books, and she suggested calling Judge McCall to the witness stand. Again, against my judgment I did this — and to the complete surprise and afterward to that of the whole city, McCall admitted the stockholdings.

"That he owned 387 shares of lighting stock when he became Public Service Commissioner, had made an ineffectual attempt to transfer it to his wife in order to avoid the

effect of the statute which made him ineligible as Commissioner while holding stock in any corporation subject to the jurisdiction of the Commission.

"Then followed several weeks of lively investigation of the facts, Miss Loeb appearing with the Committee each session.

"So completely was this work done that exactly four weeks from the day we put McCall on the stand, he was before the Governor answering charges for his removal — and although we had preferred other charges, the Governor removed him on this charge alone.

"We then investigated Commissioner Williams and his action in the gas case in which Miss Loeb had appeared and conducted the case for the consumers before the Commission. The case as she presented it to us was in such excellent shape that it was with little difficulty we were able to show that the 95c rate recommended by Commissioner Williams was palpably in excess of the highest rate justified by the facts.

"The information supplied by her from this case showed Commissioner Williams in such an unfavorable light when he attempted to have this case decided without a reduction of the rate, that he withdrew his 95c opinion and resigned. The facts concerning his resignation are confidential in some respects (known only to the Commissioner, Miss Loeb and the Chairman of the Investigating Committee), but it can safely be asserted that his resignation resulted because of the information obtained by her through study into the record of the rate case.

"We prevailed upon Miss Loeb to remain with us during the investigation of Commissioner Wood and while this was of a different character, his resignation was forced by exposures, many of which were produced only because of her ingenuity in devising publicity ways to prevail upon witnesses to attend from outside states.

"For instance when Johnson, a vital witness in the bribery attempt accusation located himself in New Jersey and after the employment of detectives and experts by the Commission refused to be lured to New York so that he could be subpoe-

naed before the Committee Miss Loeb advised sending him a telegram, asking him to appear. Every other device had failed to produce him so she was allowed to write the telegram. It was sent on Monday evening, and the next day he answered saying he would appear the following Thursday which he did. Johnson subsequently explained that he was taken by surprise on receiving the telegram and showed it to his wife who had advised him to go tell the truth and make the best of it, which he accordingly did.

“Johnson’s testimony made certain Wood’s unfitness as a Commissioner, of which the Commissioner himself finally became so convinced that he resigned. Upon the accusation developed by Johnson’s story Wood was subsequently indicted for soliciting a bribe.

“All this occurred in less than one month after McCall’s removal. The whole Commission was changed and it gave such an impetus to the investigation that the public service corporations are presently being inquired into with revelations to the public of the city of New York which must result in a more satisfactory administration of the Public Service Commission or the speedy test of the efficacy of Public Service regulation and supervision as a governmental function.

“Therefore, in view of all of these facts, details of which I would be glad to present, except that it would require the production of days of testimony taken by the Committee — she has secured for the Evening World credit for exposing the weakness of the Public Service Commission and removal of these Commissioners.

“So much am I convinced of her knowledge and ability in relation to public service and public utility corporations — that hers is the only name I have recommended to the Governor for appointment as Public Service Commissioner and after talking with him about it have written him as follows:

“‘I am still of the opinion that it would be a courageous and popular act to offer Miss Sophie Irene Loeb one of these appointments. She is eligible, has abundant ability, would be sure to make good, deserves the honor and I can surely certify that she is entitled to all credit for the success of

our investigation. Therefore I believe the least the state can do to repay her is to give her the compliment of such an offer. I certainly would feel very grateful if you can find your way clear to do this.'

"Sincerely yours,"

Miss Loeb has during the whole investigation assisted the Committee and counsel, not only during the time covered in the foregoing letter, but since to the present, giving her time unstinted and without pay solely because of a sense of duty to the public.

Mr. Klein.—What arrangement is there at the new Bellevue hospital for electricity? A. I haven't investigated it lately, but being located as it is, it is in a position to make electricity very cheaply. Up to the time when this agitation commenced in regard to the charges for electricity, they had been paying the uniform rate of seven and one-half cents. After that they would naturally get the current at the wholesale rate, but it seems that the meter in the old Bellevue hospital was a seven and one-half cent meter, and as all the electricity went through this meter, the bills were all made out at seven and one-half cents.

Q. At what rate should the current have been charged in the new Bellevue hospital, at about three cents a kilowatt hour? A. It would come to about that, but they were to receive the wholesale schedule rate.

Q. And you understand it was charged the old rate? A. Up to the time I investigated. I don't know whether that is the case at present. I should suppose not on account of the criticism that was made with regard to it.

Q. Your investigation was made after the three cent rate was supposed to be installed wasn't it? A. Well, now, in explaining this investigation, I simply went to the water department first and they didn't give any information out at all in regard to it. So I went to Mr. Read, who was formerly connected with the city, and I don't know but what he is yet, and he told me about the Board of Estimate resolution which brought the Bellevue hospital under the wholesale rate. Of course I had the report of the water commissioner to show that it was catalogued at the seven and one-half cent rate, six cents for power and seven and one-half for

lighting. So you see it wasn't an investigation based upon seeing the bills, but upon seeing the report. By seeing first the resolution of the Board of Estimate in which the rate was set at the wholesale rate and afterward a report showing all the hospitals, not only the Bellevue but others that used the Edison current and were charged seven and one-half cent for light and six cents for power.

Q. Is there a plant for making electricity in the Municipal building? A. No.

Q. Why not? A. Oh, there are various reasons. At the time this building was put under contract it was the policy of the city to give all of the lighting to the Edison Company. The Cleveland engineers had written a letter that it was a great mistake to put in plants.

Q. Who was that, Mr. Lacombe? A. Lacombe. That is a public report of his in 1908, and he says it wasn't any use for the city to compete with the Edison Company, and it was a mistake to put in these plants.

Q. What is the cost of the electric current? A. I have heard the schedule of cost in the building. Light and power for public buildings — there is a most peculiar thing in that rate. The first 75,000 consumed during the year five cents, the next 100,000 kilowatt hours four cents, the next 100,000 kilowatt hours three cents and for all in excess of that two cents. Now, of course, anyone having the slightest intelligence with regard to rate of electricity can see that if that building is entitled to two cents at any time, it is entitled to two cents during the whole time. But no, they charge five, four, three cents, just so much income in the pockets of the company that they are not entitled to. If they stopped at 75,000 kilowatt hours, it might be that five cents would be the proper price or if they stopped at 100,000, four cents. It is such an absurdity that I cannot see how anybody would subscribe to it.

Mr. Feinberg.— It is a palpable absurdity.

Q. You mean that if the city consumes enough electricity, it should not be taxed the higher rates, but should be required to pay the lowest rate? A. Yes, they should not have the scale.

Q. In this connection should not the city of New York be a preferred customer? Shouldn't it get a lower rate than any con-

sumer? A. No. It should get the rate according to the amount of electricity used. For instance, it should get a rate on street lamps on account of the long hours.

Mr. Feinberg.—It is entitled to the low rate not by reason of it being the city of New York, but because it is the largest user. A. There is no particular reason why they should get any rate.

Q. Aren't there firms such as Gimbel's and others that get the better rate? A. Surely there are or they wouldn't be burning it at all.

Q. Those reductions are because they threaten to establish their own plants and make the rates cheaper? A. Certainly.

Q. On what basis are the Edison rates established? A. The New York or Brooklyn?

Q. New York and Brooklyn. A. Well, the New York rate is established on what is called the sliding scale. There is a curious fact in the history of that rising scale. It is taken from the English scale. The scale used in gas. That is by good management and keeping up of the time they are enabled to make larger dividends, they divide it to the consumer by a sliding scale. If they reduce the price of gas a certain amount, they are entitled to divide larger dividends. In England they cannot divide what they wish to, only what they are allowed by Parliament. Here they have a sliding scale at ten cents or eight cents, and going down, down, down and apportioning the price to what they will bear. That is what decides in the case.

Q. Do you think there should be a uniform rate for electricity as there is for gas? A. I think there is such a difference in the cost of producing current and distributing current in the high tension system of production and distribution that it will warrant a slightly lower rate than the low tension, or what is called the Edison system. The rate that should be made for high and low tension consumers should simply be based upon the extra cost of small consumers and the proportionate cost for metering and collecting, etc. I want to say that the Edison Company, although it recognizes that theory and practice, it pays no attention to it. There is a list of thousands of bills made out at a discount of from forty to fifty per cent, or even more. This was part of the proceedings in the Edison case, which shows a rebate. The tenants

are supplied under the same conditions as the people along the streets are supplied and as nearly as I can make out, there is seven million dollars difference. Since the eight cent rate, \$4,770,000. It is true that data has been left out by the Edison Company and it is difficult to get the exact amount, but that is about it.

Q. You consider that the tenant consumers are imposed on to that extent? A. The tenant consumers should get the same rate as they get now, but the landlord should not get the rebate.

Q. The rebate should be made direct to the tenant? A. Yes, they should have a special rate.

Q. Do you consider the rates for electric current excessive? A. Not exactly so excessive as so absurd.

Q. How do you differentiate that? A. I will illustrate that by some bills I have. I went down to a restaurant and it happened that he showed me a bill for a week's service. Now, that man paid ten cents per kilowatt hour for the first day, nine cents for the next day, eight cents for the next day and seven cents for the next day, and as the 4th of July came in and there wasn't much business, he cut it down to seven cents the following day. Could anything be more absurd than the operation of such a rate as that? During the whole of that time he was burning at the same rate every day and he should have received the same price.

Q. Do you not consider the rate to the small consumer excessive? A. They are so out of proportion that it is a mystery how they keep it up.

Q. What do you think would be a fair maximum rate to small consumers? A. In the city of New York?

Q. Certainly. A. Six cents at the outside. Now, in a city like Holyoke, Massachusetts, a six cent rate would be absurd.

Q. Don't you think six cents a large amount for the small consumer to pay? A. It is a large rate, but I should explain that by saying that many consumers use both gas and electricity, they only use electricity on special occasions, and they should pay enough to make up the expenses that arise from the use of it and enough to cover the cost to the company for keeping it up.

Q. Do you consider that the small consumer should be so grossly charged for the benefit of the large consumer? A. It has been the

sole object of the work in the last five years to decide a fair rate, to do away with the extraordinary difference in charges.

Q. Will you explain something about that, how the small consumers are being grossly taxed for the benefit of the large consumers? A. Because he can't help himself. That is the basis of it. They can't make their own current, and these people have been sold to the scale as to what it will cost them or what it is supposed to cost them, and they can't help themselves.

Q. In other words, the Edison Company establishes the independent electric plants and puts the bulk of it on the small consumers? A. It is a thoroughly organized system of cut-throat competition. They call it competition.

Mr. Feinberg.—Do you believe that municipal ownership would change the conditions for the better for the small consumer? A. It has in many places.

Q. What towns? A. Take a town like Holyoke, Massachusetts, they took over the business from the private companies at an enormous cost, but have paid that all back again out of the profit of a six-cent rate in the course of ten years. They have recouped themselves for all of the expense of purchasing at a high price.

Q. What other cities? A. Oh, there are a hundred of them, perhaps two hundred. Where a town is so small that nobody wants to undertake the manufacturing of current, it is turned over to the municipality and it is a supposition that they would have to charge a very large price, but they find that they charge less than the larger cities.

Q. What is the highest rate charged by a town that makes its own electricity? A. I can't say. I cannot recall those prices.

Q. Are there any rates over eight cents a kilowatt hour? A. Not that I recollect. There are lots of them at six cents, and so on down to five, four and three cents. The three-cent rate in Cleveland is a peculiar affair. When they established that three-cent rate, they made a one-cent rate for manufacturers and the consequence was that they had to call on them to supply the small consumers.

Q. The bulk of the consumers pay from eight cents up? A. No, the maximum is eight cents.

Q. What is the rate in Flushing? A. Oh, I forgot about that. It runs from eight cents to small consumers to twelve cents.

Q. And those small consumers pay the largest proportionate charge of revenue to the electric companies, and receive the smallest proportionate share of current? A. I have that in regard to the Brooklyn case right here. I can state from recollection. Those paying a maximum rate produce enough revenue to the company to pay all of the expenses of the business including taxes all the way through and leave \$2,124,000 of profit, which is six per cent interest on some \$36,000,000 of capital.

Q. And then all of the income from the wholesale consumers is velvet to the company, is it? A. Such as it is. They don't get so much velvet.

Mr. Crummey.—I came here this morning in response to a request of Senator Lawson that Mr. Whitney appear before the Committee. It happened that Mr. Chambers was not at the office this morning, but I might add that I did see Mr. Hawkins in reference to the matter and he assured me that the matter would be fully taken up.

Mr. Moss.—I suggest that at some time in the future your people meet some of the Committee and give whatever information is necessary.

Mr. Edgerton.—I have here the exact statement in regard to that, that is the total income from the higher rates which is \$5,485,000 and the total expense of the company \$3,291,000, leaving \$2,194,000 profit, which is six per cent on about \$36,000,000.

Q. You were going to tell what condition prevailed in the Washington market? A. That is a peculiarity, or rather an illustration of the peculiarity of the rate.

Q. The city owns that building? A. The city operates a refrigerating plant there. They charge the operations of that refrigerating plant to the renters in the building. The renters in the building buy current of the Edison Company and by separating those two bills they extract \$60,250 out of that revenue, although it is ultimately charged to renters.

Q. By separating the Edison bill from what? A. The part the city pays for operating and the part the renters pay for lighting.

Q. And the current for both purposes comes over the same wires? A. Same wires.

Q. Why don't the city make its own current in the Washington market? A. Well, it should. The same condition prevails there as elsewhere. They don't take advantage of this opportunity.

Q. Couldn't they cut their cost in half if they would manufacture their own current? A. Less than one-third. The companies have offered to put in engines there that would be practically guaranteed, cutting that cost in three parts.

Q. You say an offer has been made? A. Yes.

Q. Made an offer to the renters of the Washington market that would cut the rate to one-third what it is now? A. To the city to operate their refrigerating and lighting by means of an oil engine instead of buying from the Edison Company.

Q. At one-third the Edison rate? A. One-third, less than that.

Q. Is there a city electric plant provided in the new courthouse? A. It was provided in the beginning, but I understand now that the financial depression has wiped it out.

Q. Have you figures to show the total annual electric bill the city of New York pays? A. Not at present. I am figuring on that now. I haven't the whole bill over all the city. What I figured out just covered the Manhattan and Bronx, it didn't include the public buildings.

Q. You said something before about the city claiming a saving on the electric rate, will you amplify that statement about the fact that instead of there being a saving, the city pays more than it did before? A. That is plain enough. All the saving was due to the invention of these new lamps, but by raising the price per kilowatt hour it has knocked out the saving. I gave you the actual bills paid for the years 1912, 1913 and 1915, and showed an increase for lighting in the Manhattan and the Bronx of \$273,925.

Q. Do you consider that the Edison Company is earning fifty-two per cent? A. No, that was on the part of the change.

Q. Fifty-two per cent on the par value. And do you believe that the physical value of the Edison Company has been put in the excess earnings since the company has been in existence? A. Well, that is very nearly covered in the surplus and excess earnings, but the money for stocks and bonds—I haven't followed

that. It may be that the money was paid from surplus and didn't appear as earnings at all. I have no doubt that was the case. The surplus built the plant, but it may at the same have been covered through dividends to stockholders and then brought back again.

Q. The Edison has made sufficient excessive profit in the last twenty years to have replaced its entire plant out of excess, hasn't it? A. I don't remember that now.

Q. That is what you said. A. If I told you that was the case, it was so.

Q. That is what your recollection is? A. My recollection is that their earnings at the present time provide surplus enough to build the plant, and as proof of that now, we find that they are getting bookwriters generally to say that that is a good plan. That is, to provide all the construction out of the surplus because if they do there will be no interest charged on it. As a matter of fact, they always manage to get interest on all they have invested.

Q. Do you recall when the city of New York compromised on the city's franchise claim extending over a number of years? A. I haven't that at hand. Without the data, it is hard to say.

Q. You remember that the city in 1910 made such an arrangement? A. Oh, yes, they compromised the franchise against the gas and electric bill which was a very large loss.

Q. The city lost a lot of money? A. Two and a half million.

Q. How do you figure that? A. Because in the first place there was a theory propounded and agreed to among the city officials pretty generally that the city bills ought to offset the franchise. That is provided the companies had so much franchise tax they would be offset in the gas and electric bill.

Q. In order to make that clear the franchise tax against the city and state accumulated for a number of years, because of contests or delays on the part of the franchise holders, and then during that period the bills of the Consolidated Gas Company, including the bills for electricity, accumulated against the city, and after a number of years there was a compromise made between the finance department, representing the city and the Consolidated Gas Company which was represented by George Cortelyou, and the result of that compromise was that the city lost about two mil-

lion and a half dollars. A. Two million and a half dollars, that was the decision in the Jamaica water case. That is bringing the franchise into harmony with that decision.

Q. And the total was about twelve million dollars? A. No, it was not as large as that, but whatever it was the compromise resulted in a large loss to the city, although it said in the papers that the city gained.

Q. In view of the fact that the city, as you say, lost more than two millions of dollars in that compromise, do you find now that the city is in the same position because it has no contract for rates? A. Well, that whole compromise wasn't based on anything that I could discover except a dicker. Of course, they can dicker so much for electricity, so much for gas, so much for tax and let's equalize it? It is estimated in that way. They didn't have any court decision at all, they jumped at it.

Q. Is there any specified contract between the city of New York and the Consolidated Gas Company now for electricity? A. Well, there is a contract in 1916 for electricity.

Q. Were those contracts signed by the city of New York? A. Yes, they were signed. That was some time ago; I think the contract was dated January 24, 1916.

Q. Weren't you informed that there was no rate in the contract, and that that matter would be left open until some adjustment was again made? A. I remember at the time that the fact was referred to that the difference between the franchise taxes and the electricity —

Q. You think you see an arrangement whereby the Edison Company and the Consolidated Gas Company are to increase their rates to offset the franchise tax? A. I see there is an increase of eighty per cent per kilowatt hour. That would offset the franchise or a great deal of it.

Q. If you noticed any peculiar control? A. Never noticed any. Of course, a man doesn't know because the commissioner of water supply doesn't give him any knowledge of the business. He must find out from subordinates as to what is going on, and if the subordinates let him know everything that is going on he may find out, if not he will not know. But as a matter of fact, my personal knowledge tends to show that everything is done to in-

crease the business. Take, for example, the lights here in this room. See how they are located, and how they have the strings hanging to let them down. That is an arrangement for the Edison Company. They use just twice the amount when they are lowered.

Q. You think the ceiling lights are put there for the benefit of the Edison Company? A. They increase the current as they raise them up to the ceiling and if that isn't sufficient they put reflectors around them.

Q. Did Commissioner Maltbie agree with you in your estimates of what is a fair maximum charge? A. I would say that he did. He followed my figures and found them indispensable in making an opinion on that case. He used the figures in the testimony and reports.

Q. What is the difference in the payment of the arc lamps in the city of New York and in Chicago? A. The arc lights in Chicago, the flaming arc lamps, are \$74. The ordinary arc lights \$95 a year, but there was a bill introduced in the Legislature which made the price \$160 for a year, but the price was so exorbitant that the thing fell through. The same type of lamp was only \$74 in Chicago.

Q. What happened? Did they install those arc lamps generally, or what happened? A. They installed some of them, around this building and down to the bridge, but the expense was so exorbitant they found them out of the question.

Q. There have been people asphyxiated in this city every winter due to gas. A. People are poisoned by the escapement of the gas. The deaths run up to three hundred fifty deaths a year. Some are cases of suicide, but some are caused from water gas.

Q. Then the water gas makes the poisonous gas? A. The oil gas doesn't make the poison.

Q. Could the gas companies in New York city have furnished a quality of gas that was non-poisonous and sell it for less than eighty cents? A. Practically, yes. That is to say if they eliminated most of this water gas and thereby raised the candle power they could.

Q. Could they have sold gas made out of oil for sixty cents at good profit? A. I think I figured seventy cents would be the fair rate, although it depends on the price at which oil is sold.

Q. Gas could be sold at sixty at a large profit in the city? A. Sixty-five.

Q. Who sold it at that? Standard Oil? A. I don't know as I ought to name the company.

Q. Is there any objection to telling the name, Mr. Edgerton? A. I remember he said to William Rockefeller that you can tell it to anybody but —

Q. You have had experience in gas matters and oil matters, haven't you? A. Yes, as buyer of oil and engineer of the United Gas Improvement Company.

Q. You have established many new gas plants, haven't you? A. Yes, in New Orleans and ever since 1874.

Q. Did you ever manufacture water gas? A. Yes, a small amount.

Q. You could manufacture water gas as cheap as oil gas, or cheaper? A. On the candle power basis, yes.

Q. Now, they propose some method of testing gas by the B. T. U. test? A. Yes, that is now being investigated, but it has been stated that it will decrease the quality of gas and raise the price.

Mr. Moss.— If the rating is lowered to eighty cents the companies stand to make just as much money notwithstanding the reduction in the rate, because of the quality of the gas being supplied? A. If they come down to the British Thermol Union they would make a gas that is a lower candle power.

Q. The British Thermol Union is a test of heat units, and what we want is illuminating light rather than heat. A. We want both.

Mr. Klein.— The eighty-cent would be raised to one dollar and twenty-five. Would the public gain by it? A. Yes.

Mr. Moss.— They have really gained by it? A. Yes.

Q. You have been exceedingly fair in your testimony. You have refrained from criticising the different companies several times when Mr. Klein's questions might have involved you, but you have refused to be lead by him and you have appeared to be a very fair witness. It is unusual to have a witness come in this way, guarding his testimony in such a way that he doesn't go

too far, and we are inclined to pay more than usual attention to your testimony. You are not here to gratify any grievance. A. Not at all.

Q. You are an old man. Your gray hairs are a crown of glory. A. I am an old man, but I feel young.

Q. Evidently you do, but you are not expecting to make a fortune in the gas business one way or the other. A. Not at all. I haven't any object.

Q. The public officials seem to have approved this new test? A. They have all fallen.

Q. What has the Commission done about it? A. The Commission seems to be treating this question very fairly, they don't propose to be taken in.

Q. Has the British Thermol Union test been established? A. It has been established where it wouldn't hurt.

Q. In New York city? A. No.

Mr. Klein.—Are the people in the water department in favor of it? A. All that I heard express an opinion. They look on my views as being absurd.

Q. What does the lighting bureau think of the B. T. U.? A. They think it is all right for heating, but for lighting it is the greatest mistake in the world.

Q. Well, the water department isn't a heating department, is it? A. It is not.

Q. They pass on every lighting bill in the city, no matter where used?

Mr. Moss.—How do the members of the Public Service Commission stand on the B. T. U. business? A. They previously egged it on.

Mr. Feinberg.—Mr. Smith desires to make a statement.

Mr. Moss.—There is just this. Did Mr. Willcox take any attitude on this matter? A. Why, on the eighty-cent gas case, yes.

Q. What was his attitude? A. That the city was wrong, and that the report was ridiculous. It was even turned down by the Supreme Court entirely. Mr. Willcox came out in an interview in the New York Times and is quoted as saying that his opinion was right, that they had gone too fast. He said that the gas companies were right and the city was wrong.

Q. Did you know that the gas case as reported in the law books is entitled, William R. Willcox and others against the Consolidated Gas Company? A. Yes, and I thought it was a fine joke.

Mr. Smith.—The Chairman of the Committee has had his attention called by letter to the proposition under the transportation corporation law, whereby gas and electric light corporations are permitted to charge and have deposited in the words of the law, "A reasonable sum of money according to the number of or the size of the light proposed to be used for twelve calendar months, and covering the quantity of gas and electric light necessary to supply the same as security for the payment of the electricity and light, or rent or compensation for inside pipe, or wire or fixtures to be used by the corporation, as a result of which requirements of the law, the New York companies have required a uniform deposit of \$5.00. Independent of what might be the legal requirement as a result of these deposits, there are large sums of money in possession of these companies by reason of unclaimed deposits, and there is no law for the renewal which provides for the disposition of these sums other than for the benefit of the company."

And while we have no opportunity to make an investigation, we want to get that in the record in the form of a note in connection with this record which may be examined as to what reports are made by the company and what disposition is made.

Mr. Moss.—Mr. Edgerton, what would you consider a maximum rate to be charged for electricity in this city to the consumer? A. I should say six cents would be the maximum rate.

Mr. Edgerton.—I say, that being connected with the eighty-cent gas case on the part of the city, after having been an expert for the state, it came about at one time that the Public Service Commission, having got Mr. Whitney as its counsel, there was an effort made to throw out all of the testimony of the state in the case and undoubtedly the success of that effort would have been a reversal of the decision in the case; that is to say, that if it was left to the gas companies' testimony as the only thing on which to base the case, by throwing out all of the testimony of the state and city, would have resulted in turning as high as \$12,000,000 back

as deposits that were tied up in the courts and turning it back in the hands of the companies.

Commodore Albert Moritz.—Mr. Moss wants me to make a statement.

Mr. Feinberg.—Where do you live? A. 723 East 18th street, Brooklyn.

Mr. Moritz.—I am appearing as a complainant in the electric light case of Brooklyn, and I object to Mr. H. H. Edgerton's testimony favoring a six-cent maximum rate whereas in my brief for the people I have demanded a flat rate of five cents. From the records in the case, in my judgment, I think they would permit a maximum flat charge of five cents.

Mr. Moss.—And you make this statement having been a witness and desire that Mr. Edgerton's idea should not in any way be quoted so as to interfere with the claim you have made in your brief in this case that is pending that five cents would be a fair rate. I think it is sufficient to have your testimony to go along with his, and it emphasizes what I said about Mr. Edgerton being conservative in his statements, he has been careful not to make any excessive claim against the company, but no doubt, Mr. Moritz, the statements which you have made is founded on the evidence and very likely is correct. I am very glad to have it on the record. As your case is pending we would be very glad to have you furnish us with a copy of your brief to place among the records of the Committee whenever you think necessary.

It has been stated that a differential of two cents would be a fair rate between the high tension and low tension consumers of electric current, and I am of the opinion that a differential of one cent is more than sufficient to make up any differences.

Senator Lawson.—For the purposes of the record there has been called to my attention a matter which I deem to be an echo of the wire tapping proclivities of the police department which illustrates to me that there are in the department, a number of rules and regulations not supported by a statutory law and which are rules created by the department itself, and all of which have a tendency to oppose the constitutional liberties of certain of our

citizens, by the police department, under the guise of being under suspicion or about to do something wrong.

The particular incident called to my attention is an order issued by the police of the 154th precinct of Brooklyn to the owners of the premises at 1799 Broadway by the name of K. Welcker, ordering him on a form letter created by the police department to dispossess a certain tenant by the name of John Miller and his family, consisting of a wife and four children, residing at 1799 Broadway, under the suspicion that the said John Miller was violating section 986 of the penal code commonly known as the anti-betting law. It seems that about a week ago two detectives under the direction of Inspector Farrell, of Brooklyn, proceeded to 1799 Broadway without warrant of arrest or other authority and met John Miller at the doorway of his home. They requested permission to go into the house and the second floor wherein he has his apartments, and they entered and found certain papers which they term as racing sheets, but which appears to be nothing more or less than newspapers containing racing charts of horses at the race track. The police officials seized these papers and without any further authority tore out the telephone of John Miller and then sent notice to the landlord that they wanted the said Miller dispossessed.

No warrant has been issued under the law for the arrest of John Miller for any crime, he has never been arrested or convicted and if the police department under their own rules and regulations can without warrant or by any other process of law instruct landlords to dispossess their tenants on suspicion, it is indeed time that the workings of the police department of the city of New York should be thoroughly investigated particularly by a legislative committee.

It is my intention at the next session of the legislature to introduce a resolution to create a committee of the Senate and the Assembly to investigate the workings of the police department of the city of New York and the various police departments of the state to ascertain wherein they derive authority to make rules and regulations not authorized by law, to permit listening in on telephones, to order the eviction of tenants without giving the tenant notice under due process of law. Such an investigation as this I

deem would be for the benefit of law-abiding citizens, because from the evidence on our record, the police are usurping the authority granted them by the Legislature and the Constitution, and are acting contrary to the police powers of the state in creating special rules and regulations governing the behavior of our citizens.

Adjourned subject to the call of the Chair.

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